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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~311.~~ 476 78 7

ANDREW HAMILTON, FRANCIS BESSICKS, AND NATHANIEL K. GRIFFIN, AS A. HAMILTON AND COMPANY, PLAINTIFFS IN ERROR,

vs.

JOSEPH R. DILLIN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED NOVEMBER 11, 1871.

Oct Term 1871

SUPREME COURT OF THE UNITED STATES.

No. 377.

ANDREW HAMILTON, FRANCIS BESSICKS, AND NATHANIEL K. GRIFFIN, AS A. HAMILTON AND COMPANY, PLAINTIFFS IN ERROR,

vs.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

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1 UNITED STATES OF AMERICA, *ss:*

To JOSEPH R. DILLIN:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the middle district of Tennessee, wherein Andrew Hamilton, Nathaniel K. Griffin and Francis Bessicks, partners, trading under the firm-name and style of A. Hamilton & Co., are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this the 20th day of May, in the year of our Lord eighteen hundred and seventy-one.

[SEAL.] CONNALLY F. TRIGG,
U. S. District Judge, presiding.

2 (Indorsed:)
96. A. Hamilton & Co., vs. Jos. R. Dillin. Citation.

Executed upon R. McP. Smith, U. S. attorney and attorney of defendant, Jos. R. Dillin, by leaving with him a copy of the within citation this 22 day of August, 1871.

T. J. HARRISON,
U. S. Marshal, Middle Dist., Tennessee.

3 The President of the United States of America to the judges of the circuit court of the United States for the middle district of Tennessee, greeting:

Because *of* the record and proceedings as also in the rendition of a judgment in a plea which is in the said circuit court before you, or some of you, between Andrew Hamilton, Francis Bessicks, and Nathaniel K. Griffin, partners, trading as A. Hamilton & Co., plaintiffs, and Joseph R. Dillin, defendant, a manifest error hath happened to the great damage of the said A. Hamilton & Co., as by their complaint appears, and it being fit that the error, if any there hath been, should be corrected and full and speedy justice done to the parties aforesaid in this behalf:

You are hereby commanded that, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the
4 Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error which of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States the first Monday in December, in the year A. D. 1870, and the 95th year of the independence of the United States.

[SEAL.] E. R. CAMPBELL,
Clerk of the Circuit Court of the United States, for the Middle District of Tennessee.

4½ (Indorsed:) A. Hamilton & Co., vs. Joseph R. Dillin. Writ of error. Issued May 20, 1871. E. R. Campbell, cl'k.

5 MIDDLE DISTRICT OF TENNESSEE, *ss:*

At a circuit court of the United States begun and held at the capitol of said State, in Nashville, on the third Monday, being the seventeenth day of April, in the year of our Lord one thousand eight hundred and seventy-one, and the 95th year of the independence of the United States—

Present, the Honorable Connally F. Trigg, United States district judge for the several districts of Tennessee—

The following proceedings were had, to wit:

On the 2nd day of February, 1870, a petition for a certiorari was filed which is in the following words:

To the judges of the circuit court of the United States for the middle district of Tennessee.

The petition of Joseph R. Dillin respectfully showeth as follows:

One Andrew Hamilton, one Francis Bissicks, and one Nathaniel
6 K. Griffin, said persons being partners under the firm-name of A. Hamilton & Co., have instituted a suit against petitioner in the circuit court of Davidson County, State of Tennessee, for upwards of $281,000.00, for money which plaintiffs aver that defendant, as acting surveyor of the customs at Nashville, in August, 1863, and subsequently, required to be paid to him under the regulations of the Secretary of the Treasury of the United States, made in pursuance of law, and also under the laws of Congress, as the condition precedent to the issuance by defendant as such officer of the customs of permits, for the transportation of cotton from the State of Tennessee to States not having been declared to be in insurrection against the United States and as tax on cotton; said money being alleged to have been paid to defendant as such officer under protest by said plaintiffs. Said cause is now pending in said State court.

Your petitioner does not admit the truth of any of the averments of plaintiffs' declaration. He has in his plea thereto traversed said allegations. Said suit is, however, brought for acts alleged to have been
7 done by petitioner which were all done, if done at all, during the late rebellion, and by petitioner acting, where he acted at all, as such officer of the Government of the United States, acting by virtue and under color of his said office.

Petitioner therefore prays that under section 1, act July 27, 1868, a writ of certiorari may issue to remove said cause to said United States court to be there tried according to law.

R. McP. SMITH,
U. S. Att'y, and Att'y for petitioner.

Affiant makes oath that the foregoing petition is true to the best of his knowledge, information, and belief.

JOSEPH R. DILLIN.

Sworn to & subscribed before me Feb'y 2, 1870.
E. R. CAMPBELL, *Clerk.*

I, R. McP. Smith, an attorney of said circuit court of Davidson County and also of said U. S. court, hereby certify that, as counsel of petitioner, Jos. R. Dillin, I have examined into the proceedings against him mentioned in the foregoing petition, and carefully inquired into all

the matters set forth therein and that I believe the same to be true as stated therein.
Feb'y 1, 1870.

R. McP. SMITH.

On the 2 day of February, 1870, a certiorari was issued which is in the following words:

The President of the United States of America, to the marshal of the middle district of Tennessee, greeting:

Whereas Joseph R. Dillon, late surveyor of customs at Nashville in said district, did present a petition to the judges of the circuit court of the United States for the district aforesaid, setting forth that a suit is pending in the circuit court of Davidson County, in the State of Tennessee, against him, brought by A. Hamilton, N. K. Griffin, and Francis Bissicks, partners under the firm-name and style of A. Hamilton & Co., for upwards of $281,000, for money which plaintiffs aver that defendant, as acting surveyor of the customs at Nashville, in August, 1863, and subsequently, required to be paid to him under the regulations of
9 the Secretary of the Treasury of the United States, made in pursuance of law and also under the laws of Congress, as conditions precedent to the issuance by defendant, as such officer of the customs, of permits for the transportation of cotton from the State of Tennessee to States not declared to be in insurrection against the United States, and as tax on cotton, and praying that a writ of certiorari issue to remove said cause to said United States circuit court, under sec. 1, act approved July 27, 1868.

These are therefore to command you, the marshal aforesaid, that you make known to the clerk of the circuit court of Davidson County the contents of this certiorari, and that the said clerk send up to this court, as is his duty under said act, a complete transcript of said cause, in order that the same be tried, and, until said cause is fully determined herein, all action will cease in said State circuit court.

Witness the Honorable Salmon P. Chase, Chief Justice of the
10 Supreme Court of the United States, and the seal of our said court at Nashville, this 2nd Feb'y, A. D. 1870, and of the independence of the United States the 94th year.

[SEAL OF THE COURT.] E. R. CAMPBELL, *Clerk.*

Came to hand same day; issued and executed on D. C. Love, clerk of the circuit court of Davidson County, Tennessee, by making known to him the contents of the within, Feb'y 28, 1870.

E. R. GLASCOCK, *Marshal.*

On the 29 day of April, 1870, a transcript from the circuit court of Davidson County, Tennessee, was filed, which is in the following words:

STATE OF TENNESSEE:

Pleas at the court-house in the city of Nashville, county of Davidson, and State aforesaid, on the fourth Monday, being the 24th day of January, in the year of our Lord one thousand eight hundred and
11 seventy, and in the 94th year of our American independence—present the Honorable Eugene Cary, one of the judges of the circuit courts of the State of Tennessee, and assigned to hold the circuit courts of the nineteenth judicial district in said State.

5 MIDDLE DISTRICT OF TENNESSEE, *ss:*

At a circuit court of the United States begun and held at the capitol of said State, in Nashville, on the third Monday, being the seventeenth day of April, in the year of our Lord one thousand eight hundred and seventy-one, and the 95th year of the independence of the United States—

Present, the Honorable Connally F. Trigg, United States district judge for the several districts of Tennessee—

The following proceedings were had, to wit:

On the 2nd day of February, 1870, a petition for a certiorari was filed which is in the following words:

To the judges of the circuit court of the United States for the middle district of Tennessee.

The petition of Joseph R. Dillin respectfully showeth as follows:

One Andrew Hamilton, one Francis Bissicks, and one Nathaniel
6 K. Griffin, said persons being partners under the firm-name of A. Hamilton & Co., have instituted a suit against petitioner in the circuit court of Davidson County, State of Tennessee, for upwards of $281,000.00, for money which plaintiffs aver that defendant, as acting surveyor of the customs at Nashville, in August, 1863, and subsequently, required to be paid to him under the regulations of the Secretary of the Treasury of the United States, made in pursuance of law, and also under the laws of Congress, as the condition precedent to the issuance by defendant as such officer of the customs of permits, for the transportation of cotton from the State of Tennessee to States not having been declared to be in insurrection against the United States and as tax on cotton; said money being alleged to have been paid to defendant as such officer under protest by said plaintiffs. Said cause is now pending in said State court.

Your petitioner does not admit the truth of any of the averments of plaintiffs' declaration. He has in his plea thereto traversed said allega-
tions. Said suit is, however, brought for acts alleged to have been
7 done by petitioner which were all done, if done at all, during the late rebellion, and by petitioner acting, where he acted at all, as such officer of the Government of the United States, acting by virtue and under color of his said office.

Petitioner therefore prays that under section 1, act July 27, 1868, a writ of certiorari may issue to remove said cause to said United States court to be there tried according to law.

R. McP. SMITH,
U. S. Att'y, and Att'y for petitioner.

Affiant makes oath that the foregoing petition is true to the best of his knowledge, information, and belief.

JOSEPH R. DILLIN.

Sworn to & subscribed before me Feb'y 2, 1870.
E. R. CAMPBELL, *Clerk.*

I, R. McP. Smith, an attorney of said circuit court of Davidson County and also of said U. S. court, hereby certify that, as counsel of petitioner, Jos. R. Dillin, I have examined into the proceedings against him mentioned in the foregoing petition, and carefully inquired into all

8 the matters set forth therein and that I believe the same to be true as stated therein.

Feb'y 1, 1870.

R. McP. SMITH.

On the 2 day of February, 1870, a certiorari was issued which is in the following words:

The President of the United States of America, to the marshal of the middle district of Tennessee, greeting:

Whereas Joseph R. Dillon, late surveyor of customs at Nashville in said district, did present a petition to the judges of the circuit court of the United States for the district aforesaid, setting forth that a suit is pending in the circuit court of Davidson County, in the State of Tennessee, against him, brought by A. Hamilton, N. K. Griffin, and Francis Bissicks, partners under the firm-name and style of A. Hamilton & Co., for upwards of $281,000, for money which plaintiffs aver that defendant, as acting surveyor of the customs at Nashville, in August, 1863, and subsequently, required to be paid to him under the regulations of
9 the Secretary of the Treasury of the United States, made in pursuance of law and also under the laws of Congress, as conditions precedent to the issuance by defendant, as such officer of the customs, of permits for the transportation of cotton from the State of Tennessee to States not declared to be in insurrection against the United States, and as tax on cotton, and praying that a writ of certiorari issue to remove said cause to said United States circuit court, under sec. 1, act approved July 27, 1868.

These are therefore to command you, the marshal aforesaid, that you make known to the clerk of the circuit court of Davidson County the contents of this certiorari, and that the said clerk send up to this court, as is his duty under said act, a complete transcript of said cause, in order that the same be tried, and, until said cause is fully determined herein, all action will cease in said State circuit court.

Witness the Honorable Salmon P. Chase, Chief Justice of the
10 Supreme Court of the United States, and the seal of our said court at Nashville, this 2nd Feb'y, A. D. 1870, and of the independence of the United States the 94th year.

[SEAL OF THE COURT.] E. R. CAMPBELL, *Clerk.*

Came to hand same day; issued and executed on D. C. Love, clerk of the circuit court of Davidson County, Tennessee, by making known to him the contents of the within, Feb'y 28, 1870.

E. R. GLASCOCK, *Marshal.*

On the 29 day of April, 1870, a transcript from the circuit court of Davidson County, Tennessee, was filed, which is in the following words:

STATE OF TENNESSEE:

Pleas at the court-house in the city of Nashville, county of Davidson, and State aforesaid, on the fourth Monday, being the 24th day of January, in the year of our Lord one thousand eight hundred and
11 seventy, and in the 94th year of our American independence—present the Honorable Eugene Cary, one of the judges of the circuit courts of the State of Tennessee, and assigned to hold the circuit courts of the nineteenth judicial district in said State.

STATE OF TENNESSEE:

To the sheriff of Davidson County, greeting:

You are hereby commanded to summon Joseph R. Dillin, if to be found in your county, to be and appear before the judge of the nineteenth circuit, at the next circuit court to be held in the county of Davidson, at the court-house in the city of Nashville, on the fourth Monday in January next, then and there to answer Andrew Hamilton, Nathaniel K. Griffin, and Francis Bissicks, partners trading under the firm-name and style of A. Hamilton & Co., in an action of trespass on the case on promises, to their damage five hundred dollars.

Herein fail not, and have you then and there this writ.

12 Witness David C. Love, clerk of our said court, at Nashville, at office, this first Monday in September, A. D. 1869, and in the 94th year of our independence.

DAVID C. LOVE, *Clerk.*
By J. F. HIDE, *D. C.*

Know all men by these presents that we, Hamilton & Co. and Horace H. Harrison, are held and firmly bound unto Joseph R. Dillin, in the sum of five hundred dollars, to be void on condition that the said A. Hamilton & Co. do pay and satisfy all costs that may accrue in their behalf in the prosecution of a suit this day commenced by them in the circuit court of Davidson County, Tennessee, against Joseph R. Dillin. Witness our hands this 6th day of January, 1870.

(Signed) A. HAMILTON & CO.
HORACE H. HARRISON, *Surety.*

Issued 6th day of January, 1870.

Came to hand same day; issued and executed upon the defendant Joseph R. Dillin this 10th day of January, 1870.

R. T. GAINES, *D. Sheriff.*

13 STATE OF TENNESSEE:

Circuit court of Davidson County, Jan'y term, 1870.

Andrew Hamilton, Nathaniel K. Griffin, and Francis Bissicks, partners trading under the firm-name and style of A. Hamilton & Co., by attorney, complain of Joseph R. Dillin, who is in court, by summons of a plea of trespass on the case on promises, to the damage of the said plaintiffs five hundred thousand dollars.

For that whereas heretofore to wit, on the 13th, 15th, 19th, and 24th days of August, A. D. 1863, the said plaintiffs at the city of Nashville to wit, at the county and State aforesaid, owned and had in their possession several lots of cotton, amounting in all to two hundred and forty-four bales, which said several lots of cotton the said plaintiff then and there desired to ship and transport from the said city of Nashville, and from the said State of Tennessee, the inhabitants of which State had before that time been declared by proclamation of the President of the United States to be in a state of insurrection

14 against the United States to a part of the United States, the inhabitants of which had not been so declared to be in a state of insurrection to wit, to the in the State of and which said several lots of cotton the plaintiffs had then and there, and at the several times and days aforesaid, a right to ship and transport as aforesaid, on compliance by them with the laws of Congress and with the lawful

requirements of the proclamation of the President of the United States and of the rules and regulations of the Secretary of the Treasury of the United States, then in force in that regard, but which said several lots of cotton the said plaintiffs could not legally ship or transport as aforesaid, without permits, in writing, for such shipment and transportation from the surveyor of customs for the time being at the city of Nashville, of all which the said Joseph R. Dillin, who was then and there to wit, at the several times aforesaid, acting surveyor of customs at said port, then and there had full notice, and the said plaintiffs then and
15 there to wit, at the several times aforesaid, at the county and State first aforesaid, applied to the said defendant, so acting as surveyor of customs as aforesaid, and claiming to be surveyor as aforesaid, for permits to ship and transport said several lots of cotton as aforesaid, and were then prepared, ready, and willing to comply, and then and there offered to comply with all the requirements of the laws of Congress, and with all the lawful requirements of the proclamation of the President of the United States, and all the rules and regulations of the Secretary of the Treasury then in force in that regard, of all which said defendant then and there had notice; but the said defendant, claiming and pretending to act under and in pursuance of a pretended regulation of the said Secretary of the Treasury, requiring as a condition of the issuance of said permits the payment of a tax or sum of money equal to fifteen dollars upon each bale of cotton, in respect of which such permits should be issued, then and there to wit, at the several times aforesaid, wrongfully and illegally demanded as a
16 condition of the issuance of such permits and of granting permission to the said plaintiffs to ship and transport said several lots of cotton as aforesaid, the payment by the said plaintiffs of the said tax or sum of fifteen dollars per bale of said cotton as aforesaid, and then and there to wit, on each of the said several days and times wron'fully and unlawfully refused to issue such permits, or to permit or allow said several lots of cotton or either of them or any part thereof to be shipped and transported as aforesaid, without the previous payment to him by the said plaintiffs of the said tax or sum of fifteen dollars per bale of said cotton; and the said defendant then and there, and on each of said days and times, declared that if said several lots of cotton, or either of them, or any part thereof, should be shipped or transported as aforesaid, or if any attempt should be made to ship or transport the same, without such permit or without the previous payment of
17 said tax or sum of fifteen dollars per bale of said cotton, he would immediately seize the cotton so shipped or transported, or attempted to be shipped or transported, and would forcibly keep and detain the same, and would forcibly prevent the same from being so shipped or transported; all which said refusals, declarations, actings and doings of the said defendant were wrongful, illegal, and unauthorized by law or by any lawful requirement of any proclamation of the President of the United States or of any rule or regulation of the Secretary of the Treasury. But the said plaintiffs being unable to ship or transport their said cotton as aforesaid, without compliance with the said wrongful and illegal demands of the said defendant, and solemnly objecting and protesting against the same and against the payment of the said tax or sum of fifteen dollars per bale of said cotton so wrongfully and illegally demanded and against all the said wrongful and illegal acts and doings of the said defendant, then and there, to wit, on the several days and times aforesaid, at the county and State first aforesaid, under protest as aforesaid, paid to the said defendant the

said tax or sum of fifteen dollars per bale of said cotton, amounting in all to the sum of three thousand six hundred and sixty dollars lawful money of the United States. And the said plaintiffs afterwards to wit, on the 1st day of September, 1864, at the county and State aforesaid demanded of the said defendant to have the said sum of three thousand six hundred and sixty dollars so wrongfully and illegally exacted from them refunded to them by the said defendant, who then and there refused to refund the same; whereby, and by reason of the premises, the said defendant, Joseph R. Dillin, became liable to pay and ought to have paid the said plaintiffs the said sum of three thousand six hundred and sixty dollars; but to pay the same or any part thereof the said defendant hath from thence hitherto wholly neglected and refused, although often requested by the said plaintiffs to pay the same.

And for that whereas, heretofore, to wit, on the 27 day of October, A. D. 1863, and on the 11th day of June, A. D. 1864, and on divers days and times between the said 27 day of October, 1863, and the said 11th day of June, 1864, the said plaintiffs, at the said city of Nashville, to wit, at the county and State first aforesaid, owned and had in their possession divers other lots of cotton, amounting in all to six millions nine hundred and forty-five thousand seven hundred and twelve pounds, which said several lots of cotton the said plaintiffs then and there desired to ship and transport from the said city of Nashville, and from the said State of Tennessee, the inhabitants of which said State had, before that time, been declared, by proclamation of the President of the United States, to be in a state of insurrection against the United States, to a part of *of* the United States the inhabitants of which had not been so declared to be in a state of insurrection, to wit, to the , in the State of , and which said several lots of cotton the said plaintiffs had then and there, and at the several times and days aforesaid, a right to ship and transport as aforesaid, on compliance by them with the laws of Congress, and with the lawful requirements of the proclamations of the President of the United States, and of the rules and regulations of the Secretary of the Treasury of the United States then in force in that regard, but which said several last-mentioned lots of cotton the said plaintiffs could not legally ship or transport as aforesaid without permits in writing for such shipment and transportation from the surveyor of customs, for the time being, at the port of Nashville, of all which the said Joseph R. Dillin, who was then and there, to wit, at the several days and times last aforesaid, acting as surveyor of customs at said port, and claiming to be surveyor as aforesaid, then and there had full notice, and the said plaintiffs then and there, to wit, at the several times and days last aforesaid, at the county and State first aforesaid, applied to the said defendant, Joseph R. Dillin, so acting as surveyor as aforesaid, for permits to ship and transport said several last-mentioned lots of cotton, as aforesaid, and were then and there prepared, ready, and willing to comply, and then and there offered to comply, with all the requirements of the laws of Congress, and with all the lawful requirements of the proclamations of the President of the United States, and of the rules and regulations of the Secretary of the Treasury, then in force in that regard, of all which the said defendant then and there had notice; but the said defendant, claiming and pretending to act under and in pursuance of a pretended regulation of the Secretary of the Treasury of the United States, requiring as a condition of the issuance of such permits the payment of a tax or sum of

money equal to four cents per pound of cotton, in respect of which such permits should be issued then and there, to wit, at and on the several times and days last aforesaid, wrongfully and illegally demanded, as a condition of the issuance of such permits, and of granting permission to the said plaintiffs to ship and transport said several last-mentioned lots of cotton as aforesaid, the payment by the said plaintiffs
of the said tax or sum of money, to wit, four cents per
22 pound of said cotton, in respect of which such permit should be
issued, and then and there, to wit, on each and every of the said last-mentioned days and times, wrongfully and unlawfully refused to issue such permits, or to permit or allow said several lots of cotton last mentioned, or either of them, or any part thereof, to be shipped or transported as aforesaid, without the previous payment to him by the said plaintiffs of the said tax or sum of four cents per pound of said cotton, and the said defendant, then and there, and on each of said days and times last mentioned, declared that if the said several lots in cotton last mentioned, or either of them, or any part thereof, should be shipped or transported as aforesaid, or if any attempt should be made to so ship or transport the same, without such permit, or without the previous payment of said tax or sum of four cents per pound of said cotton, he would immediately seize the said cotton so shipped or transported, or attempted to be shipped or transported, and would
23 forcibly keep and detain the same, and would forcibly prevent the same from being so shipped or transported; all which said last-mentioned declarations, actings, and doings of the said defendant were wrongful, illegal and unauthorized by law or by any lawful requirement of any proclamation of the President of the United States or of any rule or regulation of the Secretary of the Treasury. But the said plaintiffs, being unable to ship or transport their said last-mentioned cotton as aforesaid, without compliance with the said last-mentioned wrongful and unlawful demands of the said defendant, and solemnly objecting and protesting against the same and against the payment of the said tax or sum of four cents per pound of said last-mentioned cotton so wrongfully and illegally demanded, and against all the said last-mentioned wrongful and unlawful refusals, acts, and doings of the said defendant, then and there, to wit, on the several days and times aforesaid,
at the county and State first aforesaid, under protest as aforesaid,
24 paid the said defendant the said last-mentioned tax or sum of four cents per pound of the said last-mentioned cotton, amounting in all to the sum of two hundred and seventy-seven thousand eight hundred and twenty-eight dollars and forty-eight cents, lawful money of the United States. And the said plaintiffs afterwards, to wit, on the 1st day of September, A. D. 1864, at the county and State first aforesaid, demanded of the said defendant to have the said sum of two hundred and seventy-seven thousand eight hundred and twenty-eight dollars and forty-eight cents, so wrongfully and illegally exacted from them, refunded to them by the said defendant, who then and there refused to refund the same; whereby, and by reason of the premises, the said defendant, Joseph R. Dillin, became liable to pay, and ought to have paid, to said plaintiffs the said sum of two hundred and seventy-seven thousand eight hundred and twenty-eight dollars and forty-eight cents; but to pay the same, or any part thereof, the said defendant hath, from
thence hitherto, wholly neglected and refused, altho' often after-
25 wards requested by the said plaintiffs to pay the same. And for that whereas heretofore, to wit, on the 1st day of September, 1864, at the county and State first aforesaid, the said defendant became

and was indebted to the said plaintiffs in the sum of two hundred and eighty-one thousand four hundred and eighty-eight dollars and forty-eight cents for so much money before that time had and received by the said defendant for the use of the said plaintiffs, at the special instance and request of said defendant, and for so much money paid, laid out, and expended by the said plaintiffs to and for said defendant, at the special instance and request of the said defendant, and for so much money for fees, taxes, and charges illegally and wrongfully exacted by the said defendant from the said plaintiffs, and paid by the said plaintiffs to the said defendant; and being so indebted, the said defendant, on the said 1st day of September, A. D. 1864, at the county and State first aforesaid, undertook, and then and there promised the said plaintiffs, to pay to
26 the plaintiff the sum of two hundred and eighty-one thousand four hundred and eighty-eight dollars and forty-eight cents whenever he, the said defendant, should be thereunto afterwards requested.

Yet the said defendant, although often requested to pay said last-mentioned sum of money above demanded, and to refund and pay to the said plaintiffs the said fees, taxes, and charges so illegally and wrongfully exacted by the said defendant of the said plaintiffs, and paid by the said plaintiffs as aforesaid, hath not paid the same nor any part thereof; but to pay the same hath hitherto wholly failed and refused, and still doth fail and refuse, to the damage of the said plaintiffs five hundred thousand dollars. Wherefore they bring this suit.

$281:484.48

HORACE H. HARRISON,
Attorney for Plaintiffs.

And defendant, for plea to plaintiffs' declaration, says that he did not undertake and promise as therein alleged; and of this he puts himself upon the country.

R. McP. SMITH,
U. S. Att'y and Att'y for Defendant.

27 And plaintiff doth the like.

HOARCE H. HARRISON,
Att'y for Plaintiffs.

Declaration filed Jan'y 26, 1870.

HIDE, *D. C.*

Plea filed Feb'y 19, 1870.

D. C. LOVE, *Clerk.*

STATE OF TENNESSEE:

I, David C. Love, clerk of the circuit court for the county of Davidson, and State aforesaid, do certify that the foregoing is a correct transcript of the record and proceedings had in said court, in the case being prosecuted therein between A. Hamilton & Co., plaintiffs, and J. R. Dillin, defendant, as the same remain of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at office, in Nashville, the 20th day of April, in the year one thousand eight hundred and seventy, in the 94th year of American independence.

SEAL OF CIRCUIT COURT OF DAVIDSON CO., TENN.

D. C. LOVE, *Clerk.*

28 On the 20 day of May, 1871, a judgment was rendered which is as follows:

A. HAMILTON, FRANCIS BESSICKS, AND NATHANIEL K. GRIFFIN, trading as A. Hamilton & Co.
v.
JOSEPH R. DILLIN.

Came the parties by their attorneys, and came also a jury of good and lawful men, to wit, John B. Paris, Jackson Crockett, J. B. Knowles, B. F. McGehn, James Nichol, A. V. S. Lindsley, M. J. Oatmun, M. C. Dibrell, J. G. Mitchell, W. A. Malone, W. A. Garner, and Joseph C. Smith, who being elected, tried, and sworn, well and truly to try the issue joined, after hearing the evidence, the argument of counsel, and the charge of the court, upon their oaths do say, they find the issues in favor of the defendant. It is therefore considered by the court that the defendant go hence without day, and that he recover of the plaintiffs and Horace H. Harrison, their security on the prosecution bond
29 in this cause, the costs by him in this behalf expended, and that fi. fa. issue for the same.

And thereupon the plaintiffs, by their attorneys, presented to the court their bill of exceptions to the rulings of the court, which were signed and sealed by the court and ordered to be made a part of the record in this cause.

Bill of exceptions.

A. HAMILTON & CO.
v.
JOSEPH R. DILLIN.

Upon the trial of this cause before the circuit court of the United States for the middle district of Tennessee, the plaintiffs introduced and read the following agreement and the paper attached thereto:

Circuit court of the United States for the middle district of Tennessee.

ANDREW HAMILTON, FRANCIS BESSICKS, AND N. K. GRIFFIN, plaintiffs,
v.
JOSEPH R. DILLIN, DEFENDANT.

The plaintiffs and defendant in this cause admit the following
30 statement of facts to be correct, and consent that the same may be read in evidence on this trial:

1st. That at and during the several times and periods mentioned in the declaration of the plaintiffs, defendant was acting surveyor of customs at the port of Nashville, Tennesssee, as in said declaration alleged.

2d. That the plaintiffs had in their possession, at Nashville, at the several times mentioned in said declaration, as owners thereof, or as factors for the owners thereof, the several lots of cotton mentioned therein, and in the paper hereto attached, purporting to be an exhibit of cotton shipped by the plaintiffs from Nashville, and of payments made by them thereon, which cotton had been purchased in pursuance of the license of the President, and the regulations of the Secretary of the Treasury in that regard.

3rd. That at the several times mentioned in said declaration the plaintiffs applied, as therein alleged, to the defendant for permits to
31 ship and transport said cotton from Nashville to a loyal State; that defendant, in obedience to regulations and instructions of the Secretary of the Treasury, refused to grant such permits or to allow said cotton to be so shipped or transported, except on the previous payment by the plaintiffs of four cents per pound of that mentioned in the second count of said declaration; that the regulations and instructions of the Secretary of the Treasury, requiring such previous payment, as a necessary condition to the issuance of such permits, and directing the seizure, detention, and confiscation of all cotton which should be shipped or transported without such permit, or without such payment, had been extensively published in and about Nashville before said applications were made, and it was a fact well known and understood by the public, and by the plaintiffs, that no such shipment or transportation could be made, or would, by the defendant, be permitted, except on compliance with such requirement, and that defendant would seize and detain for confiscation all cotton so shipped or at-
32 tempted to be shipped; that the plaintiffs made no formal protest to the payment of said four cents per pound of said cotton; but in order to obtain said permits and to be allowed to ship their said cotton, the plaintiffs paid the said several sums in said declaration mentioned to the defendant as therein stated.

4th. That all the moneys so paid to the defendant were, before the commencement of this action, by him paid into the Treasury of the United States.

5th. That at all the times mentioned in said declaration said port of Nashville was within the lines of national or United States military occupation.

HORACE H. HARRISON,
Attorney for Plaintiffs.
JOS. R. DILLIN,
R. Mc. P. SMITH,
U. S. Att'y and Att'y for Def't.

Papers attached to foregoing agreement.

33 *Four-cent tax paid on cotton by A. Hamilton & Co., at Nashville, Tennessee.*

Date.	Weight.	Tax.	Am't paid.	Date.	Weight.	Tax.	Am't paid.
1863.				1863.			
August 13	20,010	4c.	800 40	November 21	15,149	4c.	605 68
" 15	10,923	"	436 92	" 24	11,072	"	442 88
" 19	26,620	"	1,064 80	" 25	17,046	"	681 84
" 24	32,848	"	1,313 92	" 26	18,531	"	741 24
" "	1,408	"	56 32	" "	6,488	"	259 52
October 27	18,204	"	728 16	" 27	9,880	"	395 20
" "	919	"	36 76	" 28	9,594	"	383 76
November 3	3,049	"	121 96	Dec'r 2	902	"	36 08
" 4	1,876	"	75 04	" "	11,188	"	447 52
" 5	5,740	"	229 60	" "	9,585	"	383 40
" "	1,838	"	73 52	" 3	9,295	"	371 80
" 7	19,329	"	731 16	" "	26,694	"	1,067 76
" 9	2,749	"	109 96	" 9	3,659	"	146 36
" 10	4,043	"	161 72	" "	27,451	"	1,098 04
" 11	10,968	"	438 72	" "	20,258	"	810 32
" 12	8,559	"	342 36	" "	18,637	"	745 48
" 13	32,204	"	1,288 16	" 11	10,311	"	412 44
" 14	5,174	"	206 96	" "	2,110	"	84 40
" "	4,540	"	181 60	" 12	20,049	"	801 96
" 18	2,682	"	107 28	" "	9,018	"	360 72
" 19	8,414	"	336 56	" "	14,797	"	591 88

Four-cent tax, &c.—Continued.

	Date.	Weight.	Tax.	Am't paid.
34	1863.			
Dec'r	19	10,016	4c.	400 64
"	"	9,082	"	363 28
"	14	7,627	"	305 08
"	"	16,251	"	650 04
"	14	27,433	"	1,097 32
"	"	17,208	"	688 32
"	"	3,784	"	151 36
"	"	24,111	"	964 44
"	"	1,512	"	60 48
"	"	7,911	"	316 44
"	"	1,435	"	57 40
"	16	3,929	"	157 16
"	"	3,875	"	155 00
"	17	17,746	"	709 84
"	"	4,405	"	170 20
"	"	8,335	"	333 40
"	"	315	"	12 60
"	19	9,238	"	369 52
"	"	12,146	"	485 84
"	"	10,909	"	436 36
"	"	37,636	"	1,513 44
"	21	5,867	"	234 68
35	1863.			
	Dec'r 31	46,408	4c.	1,856 32
	1864.			
Jan.	2	3,268	"	130 72
"	"	2,351	"	134 04
"	"	5,518	"	220 72
"	"	2,757	"	110 28
"	"	21,842	"	873 68
"	6	37,123	"	1,484 92
"	14	1,435	"	57 40
"	"	21,397	"	855 88
"	"	13,101	"	524 04
"	"	1,395	"	55 80
"	15	493	"	19 72
"	"	30,143	"	1,205 72
"	18	2,132	"	85 28
"	"	1,051	"	42 04
"	"	20,462	"	818 48
"	"	27,229	"	1,089 16
"	"	139,957	"	5,598 28
"	19	4,485	"	179 40
"	"	9,385	"	375 40
"	"	2,744	"	109 76
"	"	18,053	"	722 12
36	1864.			
Feb'y	1	25,153	4c.	1,006 12
"	3	59,285	"	2,371 40
"	"	2,309	"	92 36
"	"	36,609	"	1,464 36
"	"	5,365	"	214 60
"	"	14,176	"	567 04
"	"	7,179	"	287 16
"	"	1,405	"	56 20
"	"	3,154	"	126 16
"	5	26,247	"	1,049 88
"	"	24,443	"	977 72
"	"	3,029	"	121 16
"	"	28,597	"	1,143 88
"	"	18,655	"	746 20
"	"	18,073	"	722 92
"	"	7,615	"	304 60
"	"	3,108	"	124 32
"	"	2,163	"	86 52
"	"	12,803	"	512 12
"	6	3,480	"	139 20
"	"	6,899	"	275 96
"	"	7,126	"	285 04
37	1864.			
Feb'y	12	15,185	4c.	607 40
"	"	6,437	"	241 48
"	15	20,007	"	800 28
	1863.			
Dec'r	21	11,000	4c.	440
"	22	3,071	"	122 84
"	"	19,015	"	760 60
"	"	27,491	"	1,099 64
"	23	34,301	"	1,372 04
"	"	8,928	"	357 12
"	"	3,357	"	134 28
"	"	7,111	"	284 44
"	24	8,884	"	355 36
"	"	4,545	"	181 80
"	"	12,942	"	517 68
"	"	6,220	"	248 80
"	28	5,745	"	229 80
"	"	4,636	"	185 44
"	"	14,494	"	579 76
"	"	8,126	"	325 04
"	30	47,659	"	1,906 36
"	"	987	"	39 48
"	"	5,873	"	234 92
"	"	11,906	"	476 24
"	"	15,550	"	622
"	"	1,330	"	53 20
	1864.			
Jan.	19	40,741	"	1,629 64
"	"	3,266	"	130 64
"	"	2,409	"	96 36
"	22	29,642	"	1,185 68
"	"	2,073	"	82 92
"	"	5,996	"	239 84
"	"	12,790	"	511 60
"	"	18,227	"	729 08
"	23	35,834	"	1,433 36
"	"	46,719	"	1,868 76
"	"	4,250	"	170 00
"	"	19,949	"	797 96
"	"	16,789	"	671 56
"	"	3,614	"	144 56
"	"	24,248	"	969 92
"	"	3,475	"	139 00
"	"	37,332	"	1,493 28
"	"	1,962	"	78 48
"	"	7,444	"	297 76
"	"	17,980	"	719 20
"	"	10,400	"	416 00
Feb'y	1	54,585	"	2,183 40
	1864.			
Feb'y	6	44,710	4c.	1,788 40
"	"	40,053	"	1,602 12
"	"	4,641	"	185 64
"	8	11,903	"	476 12
"	10	4,083	"	163 32
"	"	24,244	"	969 76
"	"	4,410	"	176 40
"	"	2,057	"	82 28
"	"	12,998	"	519 92
"	"	46,352	"	1,854 08
"	"	30,753	"	2,030 12
"	12	22,006	"	880 24
"	"	5,838	"	233 52
"	"	57,139	"	2,285 56
"	"	19,239	"	769 56
"	"	11,521	"	460 84
"	"	2,525	"	101 00
"	"	44,742	"	1,789 68
"	13	10,817	"	442 68
"	"	893	"	35 72
"	"	2,003	"	80 12
"	"	24,914	"	996 56
	1864.			
Feb'y	22	2,173	4c.	86 92
"	"	14,741	"	589 64
"	"	18,563	"	742 52

Four-cent tax, &c.—Continued.

Date.	Weight.	Tax.	Am't paid.
1864.			
" "	8,817	4c.	352 68
" 17	8,921	"	356 84
" "	11,305	"	452 20
" "	9,166	"	366 64
" "	6,138	"	245 52
" "	2,972	"	118 88
" "	11,171	"	446 84
" "	22,553	"	902 08
" 18	13,439	"	537 56
" 20	3,784	"	151 36
" "	7,342	"	293 68
" "	40,393	"	1,615 72
" "	37,586	"	1,503 44
" "	4,544	"	181 76
" "	24,006	"	960 24
" "	7,332	"	293 28
" 22	841	"	33 64
" "	8,353	"	334 08
" "	14,985	"	599 40
38 1864.			
Feb'y 10	36,276	4c.	1,451 04
" "	61,823	"	2,472 92
" "	13,863	"	554 52
" "	1,706	"	68 24
" "	11,169	"	446 76
" "	10,249	"	409 96
" "	3,787	"	151 48
" "	4,696	"	187 84
" "	18,131	"	725 24
" 11	70,847	"	2,833 88
" "	120,337	"	413 48
" 12	355	"	14 20
" "	4,858	"	194 32
" "	4,337	"	173 48
" "	11,052	"	442 08
" "	43,770	"	1,750 80
" "	23,165	"	926 60
" "	23,410	"	936 40
" "	1,522	"	60 88
" 15	13,050	"	522 00
" 16	2,337	"	93 48
" "	37,833	"	1,513 32
39 1864.			
Feb'y 19	7,030	4c.	281 20
" 22	21,752	"	870 08
" "	8,620	"	344 80
" "	3,550	"	142 00
" "	16,127	"	645 08
" "	4,528	"	181 12
" "	23,392	"	935 68
" "	5,080	"	203 20
" "	4,352	"	174 08
" "	19,623	"	784 92
" "	5,540	"	221 60
" "	3,319	"	132 76
" 24	6,227	"	249 08
" "	2,998	"	119 92
" "	1,151	"	46 04
" "	2,191	"	87 64
" "	2,460	"	98 40
" "	1,833	"	73 32
" "	2,369	"	94 76
" "	75,408	"	3,016 32
" 26	20,069	"	802 76
" "	1,983	"	79 32
40 1864.			
April 2	1,947	4	77 88
" "	72,574	"	2,902 96
" 6	14,940	"	597 60
" "	1,775	"	71 00
" "	9,873	"	389 92
" "	2,822	"	112 88
" "	5,494	"	216 96

Date.	Weight.	Tax.	Am't paid.
1864.			
" 23	9,224	4c.	368 96
" "	5,741	"	229 64
" "	63,373	"	2,530 92
" "	53,892	"	2,115 68
" "	2,822	"	115 28
" 24	28,230	"	1,129 20
" "	9,035	"	361 40
" "	9,001	"	360 04
" "	57,528	"	2,301 12
" 25	8,110	"	324 40
" 26	11,367	"	454 68
" "	27,511	"	1,100 44
" "	29,795	"	1,191 80
March 3	12,694	"	507 76
" 4	14,171	"	566 84
" "	10,628	"	425 12
" 7	36,111	"	1,444 44
" 10	40,473	"	1,618 92
" "	21,566	"	862 64
1864.			
Feb'y 16	62,140	4c.	2,485 60
" "	1,573	"	62 92
" "	60,012	"	2,400 48
" "	28,021	"	1,120 84
" "	9,090	"	363 60
" "	8,545	"	341 80
" "	26,172	"	1,046 88
" "	6,691	"	267 64
" 18	19,504	"	780 16
" "	6,853	"	274 12
" "	21,438	"	857 52
" "	19,989	"	799 56
" "	12,377	"	495 08
" "	42,887	"	1,715 48
" "	5,798	"	231 92
" "	11,250	"	450 00
" "	1,807	"	72 28
" "	33,767	"	1,350 68
" 19	39,700	"	1,588 00
" "	8,769	"	350 76
" "	8,899	"	355 96
" "	11,552	"	462 08
1864.			
Feb'y 26	2,614	4c.	104 56
" "	21,135	"	805 40
" "	2,201	"	88 04
" "	27,434	"	1,097 36
" "	2,746	"	109 84
" "	1,781	"	71 24
" "	62,362	"	2,495 28
" 28	5,875	"	235 00
" "	76,149	"	3,045 96
" "	40,747	"	1,629 88
April 1	12,473	"	498 92
" "	11,299	"	451 96
" "	45,591	"	1,823 64
" "	6,742	"	269 68
" "	7,079	"	283 16
" "	9,393	"	375 72
" "	47,330	"	1,893 20
" 2	9,012	"	360 48
" "	6,851	"	274 04
" "	6,187	"	247 48
" "	20,685	"	827 40
" "	3,723	"	148 92
1864.			
Ap'l 15	19,969	4	798 76
" "	10,250	"	410 00
" "	9,673	"	386 92
" "	32,809	"	1,312 36
" 16	1,273	"	50 92
" "	6,693	"	267 68
" "	7,197	"	289 88

Four-cent tax, &c.—Continued.

Date.	Weight.	Tax.	Am't paid.	Date.	Weight.	Tax.	Am't paid.
" "	50,590	"	2,023 60	" "	9,358	"	374 08
" "	7,498	"	297 12	" "	26,689	"	1,067 56
" "	11,913	"	476 52	" 20	29,406	"	1,176 24
" "	24	"	0 96	" "	3,267	"	130 68
" 9	21,003	"	840 12	" "	21,770	"	870 80
" "	1,994	"	71 76	" "	75,601	"	3,024 04
" "	11,700	"	468 00	" "	7,483	"	299 32
" "	15,272	"	610 88	" "	4,712	"	188 48
" 13	76,035	"	3,041 40	" "	29,096	"	1,163 84
" "	8,250	"	330 00	" "	54,091	"	2,163 64
" "	57,972	"	2,318 88	" 22	16,736	"	669 44
" "	24,477	"	979 08	" "	40,494	"	1,619 76
" 15	8,174	"	326 96	" "	11,434	"	457 36
" "	12,066	"	482 64	" 23	28,543	"	1,141 72
" "	6,809	"	272 36	" "	8,891	"	355 64
41 1864.				1864.			
Ap'l 26	58,357	4	2,334 28	May 4	33,395	4	1,335 80
" "	2,801	"	112 04	" "	6,763	"	270 52
" "	7,425	"	297 00	" "	388	"	15 52
" "	10,179	"	407 16	" "	5,341	"	213 64
" "	9,914	"	396 56	" 7	1,307	"	52 28
" "	1,244	"	49 76	" "	38,582	"	1,543 28
" 27	5,784	"	231 36	" "	8,343	"	333 72
" "	14,671	"	586 84	" "	65,475	"	2,619 00
" "	7,683	"	306 12	" "	2,428	"	97 00
" "	7,643	"	305 72	" 19	12,456	"	498 24
" 29	21,240	"	849 60	" "	39,340	"	1,573 60
" "	32,264	"	1,290 56	" "	2,467	"	99 48
" "	5,460	"	218 14	" "	1,878	"	75 12
" "	5,677	"	227 08	" "	18,134	"	725 36
" "	881	"	35 24	" "	66,192	"	2,647 68
May 2	53,120	"	2,124 80	" 14	765	"	30 60
" "	2,749	"	109 96	" "	46,853	"	1,874 12
" "	5,658	"	226 32	" 19	35,316	"	1,412 64
" "	9,424	"	376 96	" "	3,925	"	157 00
" "	6,352	"	334 08	" "	10,234	"	409 36
" 4	14,637	"	585 48	" 25	30,862	"	1,234 48
" "	62,305	"	2,492 20	" "	2,673	"	106 92
42 1864.				1864.			
May 25	22,594	4	900 96	June 22	4,234	4	169 36
" "	9,133	"	364 92	July 5	16,378	"	655 12
" "	24,402	"	976 08	" "	8,356	"	334 24
" 26	6,045	"	241 80	7	28,591	"	113 64
" 31	20,163	"	806 52	9	9,809	"	392 36
June 1	8,771	"	350 84	"	14,709	"	588 36
" "	6,979	"	279 16	"	2,417	"	296 68
" 2	962	"	38 48	11	16,325	"	653 00
" "	8,057	"	322 28	"	7,358	"	294 32
" "	2,351	"	94 04	13	10,028	"	401 12
" "	18,467	"	738 68	20	1,184	"	47 36
" 7	8,532	"	341 28	21	19,617	"	784 68
" 10	9,995	"	399 80	"	2,030	"	81 20
" 14	3,320	"	132 80	23	3,580	"	143 20
" "	7,252	"	290 08	25	2,959	"	118 36
" "	9,157	"	366 28	June 11	25,913	"	1,036 52
" "	6,621	"	264 84		7,036,521		$281,460 84
" 16	2,898	"	115 92				
" 18	5,194	"	207 76				
" "	16,907	"	676 28				
" 21	5,964	"	238 56				
" 22	15,607	"	624 28				

43 In all amounting to seven million and thirty-six thousand five hundred and twenty-one pounds of cotton, at 4 cents per pound, two hundred and eighty-one thousand four hundred and sixty dollars and eighty-four cents.

The plaintiffs next introduced and read the following agreement signed by the U. S. district attorney :

Circuit court of the United States for the middle district of Tennessee.

ANDREW HAMILTON, NATHANIEL K. GRIFFIN, and Francis Bissick, plaintiffs,
vs.
JOSEPH R. DILLIN, DEFENDANT.

It is stipulated and agreed by the parties in this cause that proof may be made on the trial thereof of any proclamation, license, order, or direction of the President of the United States, or of any regulation, instruction, or direction of the Secretary of the Treasury, or other head of a Department, or officer, or agent of the United , by pro-
44 ducing a printed copy thereof in any book of statutes, proclamations, regulations, or instructions, or other book, or document, printed or published by authority of Congress, or any head of a Department, or other proper officer of the United States.

R. McP. SMITH,
U. S. Att'y and Attorney for Defendant.

The plaintiffs next introduced, under said last-mentioned agreement and read as evidence, the following from "Trade regulations for the government of the limited commercial intercourse licensed by the President between the citizens of loyal States and the inhabitants of States and parts of States heretofore declared to be in insurrection, as revised and republished September 11th, 1863," to wit:

SECTION 5. "No goods, wares, or merchandise will be allowed to be transported to, from, or within any State or part of a State under restriction or declared in insurrection, except under permits, certificates, and clearances, as hereinafter provided."

SECTION 6. The officers of the Treasury Department authorized to grant permits to districts in States or parts of States heretofore
45 declared to be in insurrection, but where commercial intercourse has been or may be licensed by the President under regulations of the Secretary of the Treasury are the surveyors of customs at Pittsburgh, Wheeling, Cincinnati, Madison, Louisville, New Albany, Evansville, Paducah, Cairo, Quincy, Saint Louis, Nashville, Memphis, and Baltimore; the collector of customs at Philadelphia, Georgetown, Beaufort, in North Carolina; Port Royal, in South Carolina; and the collector of internal revenue at New Orleans. Other officers will be designated to grant permits should the public interests require it, and no permit will be granted, except by such officers as shall be authorized by the Secretary of the Treasury, or such as are approved by him.

SECTION 20. All proper and loyal persons may apply, in the prescribed form, to the proper supervising special agent or an assistant special agent designated by him for authority to purchase, for money other than gold or silver, any of the products of the country
46 within the lines of national military occupation in his agency, except when prohibited by order of the general commanding department or other special military order, and to transport the same to market, and, on making and filing with said agent, an affidavit in the prescribed form, and executing a bond with penalty and sureties to be approved by said agent, and conditioned that he will pay or secure all fees required by regulations, that he will not purchase products at any place other than that named in the authority, or engage directly or indirectly in prohibited trade; and that no military, naval, or civil officer,

or person prohibited by law, or by order of the President, or of military or naval commanders having proper authority, from being interested in property purchased by him shall be so interested therein the supervising special agent or assistant special agent designated by him if he deems it expedient, may authorize the proper officer to permit, on
47 payment or security of the prescribed fees, the purchase and transportation of products, as applied for, except articles prohibited. Upon presentation of such authority to any officer named in regulation 6, he may issue a permit for the purchase, transportation, and sale of products specified in pursuance of the terms of the authority, but, before delivering it, he will require the prescribed fees to be paid, or a bond therefor to be executed to the United States, with penalty and sureties, approved by him, conditioned that the fees for each shipment made under the permit shall be paid to him or some other proper officer at the time, or within ten days after such shipment shall be made, and that, im'ediately after the making of any such shipment by land or water under the permit, notice of such shipment shall be forthwith given to the officer issuing the permit, which notice shall specify the date and place of shipment, and contain or be accompanied by a description of the property, and the marks thereon, and a statement of its destination, and the route thereto, and that, upon its arrival at
48 any port, where there is an officer of customs, a similar report shall be forthwith made to him. If any person obtaining a permit and paying the fees therefor shall purchase or transport, no merchandise under the same, or a less quantity than is permitted, the fees paid or the proper proportion thereof shall be refunded, on application and due showing to the proper supervising special agent. Any neglect on the part of the person permitted to purchase and transport, or of any one acting for them to comply with regulations and local rules, or with the conditions of the bond to the permit-officer, shall work immediate forfeiture of all rights under the authority or permit, and any property purchased or transported under the same after such neglect shall be forfeited to the United States.

SECTION 40. All vessels, boats, and other vehicles used for transportation, violating regulations or local rules, and all cotton, tobacco, or other merchandise shipped or transported, or purchased or sold
49 in violation thereof, will be forfeited to the United States. If any false statement be made, or deception practiced in obtaining an authority, certificate, or permit under these regulations, such authority, certificate, or permit, and all others connected therewith or affected thereby, will be absolutely void; and all merchandise purchased or shipped under them shall be forfeited to the United States. In all cases of forfeiture, as aforesaid, immediate seizure will be made and proceedings instituted promptly for condemnation. The attention of officers of the Government, common carriers, shippers, consignees, owners, masters, conductors, agents, drivers, and other persons connected with the transportation of merchandise, or trading therein, is particularly directed to the acts of July 13, 1861, May 20, 1862, and March 12th, 1863, and to the orders of the Secretaries of War and of the Navy, hereto appended.

SECTION 42. The following fees are prescribed:

Fees for administering oaths and certifying affidavit	10 cents.
For each authority from agent	3 doll's.
50 For certificate of local special agent	10 cents.
" each permit for purposes of trade.....	20 "

" " " to purchase cotton in an insurrectionary district, and to transport the same to any loyal State, per pound	4 cents.
" permit so to purchase and transport tobacco, per hhd	2 doll's.
" permit so to purchase or sell, and transport to or from such district other product, goods, wares, or merchandise, five per centum on the sworn invoice value thereof at the place of shipment.	
" each permit for individual, family, or plantation supplies, on every purchase over $20 and not over $50	5 cents.
Over $50 and not over $100	10 "
" $100	15 "

For permits for individual, family, or plantation supplies, not over twenty dollars in amount, no charge is allowed except for revenue stamps.

51 On affidavits and certificates, in districts under restriction, no charge except 5 cents for permit and 5 cents for each revenue stamp on affidavit and certificate is allowed in States declared in insurrection. When purchases are less than five dollars the permit officer may dispense with affidavits and certificates, when no ground to suspect fraud or imposition appears.

SECTION 46. All money received by each assistant or local special agent shall be paid over as promptly as possible to the supervising special agent, or to an assistant treasurer or designated depository, as directed by him, and so that all receipts during each month shall be paid over before the making of his required monthly report; and all money received by each supervising special agent or collector, or surveyor, or other officer authorized to grant permits under these regulations, shall be promptly paid over to the assistant treasurer or designated depository most convenient to him, and so that all reports,

52 for each month shall be so paid over before the making of his monthly report.

The plaintiffs then introduced, and under said agreement signed by R. McP. Smith, U. S. attorney and attorney for defendant, the following extract from the order of the Secretary of War, dated March 31, 1863, being General Order No. 88, to wit: * *

"That no officer of the Army of the United States, nor other person connected therewith, shall authorize or have any interest in the transportation of any goods, wares, or merchandize, (except supplies belonging to or contracted for by the United States, designed for the military or naval forces thereof, and moving under military or naval orders, and except also sutlers' supplies and other things necessary for the use and comfort of the troops of the United States, and moving under permits of the authorized officers of the Treasury Department,) into any State declared by the President to be in insurrection, nor authorize nor have any interest in the purchase or sale therein of any goods or

53 chattles, wares, or merchandize, cotton, tobacco, or other product of the soil thereof, nor the transportation of the same, except as aforesaid, therefrom or therein. Nor shall any such officer or person authorize, prohibit, or in any manner interfere with any such purchase or sale, or transportation, which shall be conducted under the regulations of the Secretary of the Treasury, unless under some imperative

military necessity, in the place or section where the same shall be conducted, or unless requested by an agent or some other authorized officer of the Treasury Department, in which case all commanders in military departments, districts, and posts, will render such aid in carrying out the provisions of said act, and in enforcing due observance of the said regulations of the Secretary of the Treasury, as can be given without manifest injury to the public service."

Also the order of the Secretary of War, dated September 11, 1863:

WAR DEPARTMENT, *September* 11, 1863.

54 The attention of all officers and soldiers of the Army of the United States, whether volunteer or regular, is specially directed to the revised regulations of the Secretary of the Treasury, approved by the President, dated Sept. 11, 1863, and superceding the regulations of March 31, 1863, and they will in all respects observe General Order of this Department number eighty-eight, and dated March 31, 1863, in regard to said revised regulations, as if the same had been originally framed and promulgated with reference to them.

EDWIN M. STANTON,
Secretary of War.

It was admitted by defendant that the said defendant was the only person at Nashville, Tennessee, authorized to grant permits under the said regulations of the Secretary of the Treasury, between the 13th day of August, 1863, and the 11th day of June, 1864.

It was then admitted by defendant that during all the time be-
55 tween the said 13th day of August, 1863, and the 11th day of June, 1864, there was a large United States military force stationed at the city of Nashville, sufficient to enforce the said orders of the Secretary of War.

Here the plaintiffs rested their case.

The defendant introduced no evidence.

This was all the evidence in the cause.

Whereupon the counsel for the plaintiffs asked the court to charge the jury as follows:

First. That defendant had no legal right to demand of plaintiffs the several sums of money, or any of them, in the plaintiffs' declaration mentioned. 1

This the court refused to charge, and to the action of the court in refusing the same the plaintiffs, by their counsel, then and there excepted.

Second. That the act of Congress of July 13, 1861, conferred no legal power on the Secretary of the Treasury to authorize said exactions. 2

This the court refused to charge, and to the action of the court
56 in refusing the same the plaintiffs, by their counsel, then and there excepted.

Third. That it was not the intent or purpose of the act of July 13, 1861, to empower the Secretary of the Treasury to authorize the making of said exactions. 3

This the court refused to charge, and to the action of the court in refusing the same the plaintiffs, by their counsel, then and there excepted.

Fourth. That if it was the intent and purpose of the said act of July 13, 1861, to empower the Secretary to authorize the making of said exactions, the said act of Congress was to that extent unconstitutional and void. 4

This the court refused to charge, and to the action of the court in re-

fusing the same the plaintiffs, by their counsel, then and there excepted.

Fifth. That no other act of Congress than the act of July 13, 1861, conferred upon the Secretary of the Treasury the power to authorize said exactions.

This the court refused to charge, and to the action of the court
57 in refusing the same the plaintiffs, by their counsel, then and there excepted.

Sixth. That the Secretary of the Treasury had no legal power to authorize said exactions.

This the court refused to charge, to which action of the court the plaintiffs, by their counsel, then and there excepted.

Seventh. That said exactions have not been legalized by the act of Congress of July 2nd, 1864.

This the court refused to charge, to which action of the court plaintiffs, by their counsel, then and there excepted.

Eighth. That it was not the intent or purpose of said act of Congress of July 2, 1864, to ratify or legalize said exactions.

This the court refused to charge, to which action of the court the plaintiffs, by their counsel, then and there excepted.

Ninth. That if it was the intent and purpose of said act of July 2, 1864, to legalize said exactions, said act to that extent unconstitutional and void.

58 This the court refused to charge, to which action of the court plaintiffs, by their counsel, then and there excepted.

Tenth. That said exactions have not been legalized by any means.

This the court refused to charge, to which action of the court the plaintiffs, by their counsel, then and there excepted.

Eleventh. That said exactions were taxes.

This the court refused to charge, to which action of the court the plaintiffs, by their counsel, then and there excepted.

Twelfth. That, if said exactions were made with a view to revenue, they were taxes.

This the court refused to charge, and to the action of the court in refusing to charge the same the plaintiffs, by their counsel, then and there excepted.

Thirteenth. That if the jury believed that plaintiffs paid the said several sums of money in the plaintiffs' declaration mentioned under
59 the circumstances set forth in the agreed statement of facts and in the evidence, such payment was involuntary.

This the court refused to charge, to which action of the court the plaintiffs, by their counsel, then and there excepted.

Fourteenth. That if the jury find that the money paid in compliance with said exactions was paid to secure to the plaintiffs the permission to ship their cotton, as in said plaintiffs' declaration alleged, such payment was involuntary.

This the court refused to charge, to which action of the court the plaintiffs, by their counsel, then and there excepted.

Fifteenth. That if the facts set forth in the agreed statement and in the evidence are true, plaintiffs had a right to ship their cotton without compliance with said exactions of money.

This the court refused to charge, to which action of the court the plaintiffs, by their counsel, then and there excepted.

60 Sixteenth. That no protest was necessary to enable the plaintiffs to recover back the money paid in compliance with said exactions.

This the court refused to charge, to which action of the court the plaintiffs, by their counsel, then and there excepted.

Seventeenth. That if the jury find from the evidence that said exactions were involuntarily paid by the plaintiffs, no protest was necessary to enable said plaintiffs to recover them back.

This the court refused to charge, to which action of the court the plaintiffs, by their counsel, then and there excepted.

Eighteenth. That if the jury find from the evidence that said exactions were made by the defendant as and in the name of "fees" no protest was necessary to enable the plaintiffs to recover them back.

This the court refused to charge, and to the action of the court the plaintiffs, by their counsel, then and there excepted.

The court thereupon charged the jury, and, among other things
61 not excepted to, charged as follows:

First. That the act of July 13, 1861, entitled "An act further to provide for the collection of duties on imports and for other purposes," conferred power upon the Secretary of the Treasury to authorize the exactions mentioned in said plaintiffs' declaration.

To this charge the plaintiffs, by their counsel, then and there excepted.

Second. That whether said act of July 13, 1861, conferred such power or not, the action of the Secretary of the Treasury in imposing, and of the defendant in making, said exactions, was ratified and made valid by the act of July 2, 1864, entitled "An act in addition to the several acts concerning commercial intercourse between loyal and insurrectionary States, and to provide for the collection of captured and abandoned property, and the prevention of frauds in States declared in insurrection."

To this charge the plaintiffs, by their counsel, then and there excepted.

62 Third. That plaintiffs could not maintain action to recover back said exactions, even if they had been illegal, for want of having protested against them at the time of payment.

To this charge the plaintiffs, by their counsel, then and there excepted.

And thereupon the plaintiffs, by their attorneys, then and there tendered to the court this their bill of exceptions, which is signed, sealed, and ordered to be made a part of the record.

CONNALLY F. TRIGG, [SEAL.]
District Judge, presiding.

UNITED STATES OF AMERICA,
Middle District of Tennessee, ss:

I, E. R. Campbell, clerk of the circuit court of the United States for the district aforesaid, do hereby certify that the foregoing is a
63 true, perfect, and complete transcript of the record and proceedings in the case of A. Hamilton and Co. against Joseph R. Dillin as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at office, in Nashville, in said district, on this the 15th day of August, A. D. 1871, and of the independence of the United States the 96th year.

[SEAL.] E. R. CAMPBELL,
Clerk Circuit Court of the U. S., Middle District of Tennessee.

(Indorsement on cover:) No. 377. Andrew Hamilton, Francis Bessicks, and Nathaniel K. Griffin, as A. Hamilton & Co., plaintiffs in error, vs. Joseph R. Dillin. M. Tennessee C. C. U. S. Filed 11th November, 1871.

Supreme Court

OF THE UNITED STATES.

ANDREW HAMILTON AND COMPANY,
Plaintiffs in Error,

vs.

JOSEPH R. DILLON.

Argument for Plaintiffs in Error,

BY

EDWARD JORDAN, *of Counsel.*

NEW YORK:
JOHN POLHEMUS, PRINTER, 102 NASSAU STREET.

1874.

May it please the Court:

This action was brought to recover from the defendant something over two hundred and eighty thousand dollars, which he exacted from the plaintiffs under the following circumstances:

On the 13th July, 1861, at a time when combinations of persons in several of the States had adopted resolutions of secession from the Union, and had arrayed themselves in resistance to the laws; and after the President had, by proclamation, called forth the militia of the several States to suppress such combinations, Congress passed an Act entitled "An Act further to provide for the collection of duties on imports, and for other purposes," the main object of which was to provide means for collecting the customs duties in localities where obstructions had been, or should be, raised by the insurgents, to their collection in the ordinary manner, but the fifth section of which provided: "That whenever the President, in pursuance of the provisions of the second section of the Act entitled 'An Act to provide for calling forth the militia, to execute the laws of the Union, suppress insurrections and repel invasions, and to repeal the Act now in force for that purpose,' approved February 28, 1795, shall have called forth the militia to suppress combinations against the laws of the United States, and to cause the laws to be duly executed, and the insurgents shall have failed to disperse by the time directed by the President, and when said insurgents claim to act under the authority of any State or States, and such claim is not disclaimed or repudiated by the persons exercising the functions of government in such

State or States, or in the part or parts thereof in which said combination exists, nor such insurrection suppressed by said State or States, then, and in such case, it may and shall be lawful for the President, by proclamation, to declare that the inhabitants of such State, or any section or part thereof where such insurrection exists, are in a state of insurrection against the United States; and thereupon all commercial intercourse, by and between the same and the citizens thereof, and the citizens of the rest of the United States, shall cease and be unlawful, so long as such condition of hostility shall continue; and all goods and chattels, wares and merchandise, coming from said State or section into the other parts of the United States, and all proceeding to such State or section, by land or water, shall, together with the vessel or vehicle conveying the same, or conveying persons to or from such State or section, be forfeited to the United States; *provided*, however, that the President may, in his discretion, license and permit commercial intercourse with any such part of said State or section, the inhabitants of which are so declared in a state of insurrection, in such articles, and for such time, and by such persons, as he, in his discretion, may think most conducive to the public interest; and such intercourse, so far as by him licensed, shall be conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury. And the Secretary of the Treasury may appoint such officers, at places where officers of the customs are not now authorized by law, as may be needed to carry into effect such licenses, rules and regulations; and officers of the customs, and other officers, shall receive, for services under this section, and under said rules and regulations, such fees and compensation as are now allowed for similar services under other provisions of law."

On the 16th of August, 1861, the President issued a proclamation declaring that the inhabitants of certain States, and among them the State of Tennessee, were in a state of insurrection.

On the 28th day of February, 1862, he promulgated a license in the following words, viz. :

"Considering that the existing circumstances of the country allow a partial restoration of commercial intercourse between the inhabitants of those parts of the United States heretofore declared to be in a state of insurrection, and the citizens of the loyal States of the Union, and exercising the authority and discretion confided to me by the Act of Congress approved July 13th, 1861, entitled, 'An Act further to provide for the collection of duties on imports, and for other purposes,' I hereby license and permit such commercial intercourse in all cases within the rules and regulations which *have been, or may be,* prescribed by the Secretary of the Treasury for the conducting and carrying on of the same, on the inland waters and ways of the United States."

At this time no regulations had been issued by the Secretary of the Treasury, but subsequently several successive series were established, the first of which were adopted on the 4th of March, 1862.

All these various sets of regulations, some of which were quite numerous and elaborate, consisted, in the main, of rules apparently designed and calculated to secure the proper conduct of the intercourse to be carried on under them; but they also all contained provisions requiring the payment of certain charges therein specified.

The section of the series of 4th March, 1862, prescribing these charges, was as follows, viz. :

"For each permit granted under the provisions of these rules and regulations, there shall be charged and collected one-half of one per cent. upon the value of the merchandise so permitted, at the place of purchase, which shall be collected by the officer granting the permit before the delivery thereof."

It is to be observed, however, that the Secretary, on the 29th of the same month, in a circular to collectors of the customs—wherein he declared that it was desirable to remove, as far as might properly be done, the restrictions upon commercial inter-

course between the loyal States and those declared to be in insurrection, and which might resume a loyal adhesion to the Union, or might be occupied and controlled by the forces of the United States—directed, among other things, that surveyors, acting as collectors, should cease collecting any per centage or fees for permitting the transit and exchange of merchandise between the citizens of loyal and those of insurrectionary sections, other than twenty cents for each permit so granted.

The section of the series of August 28, 1862, prescribing the charges, was in the following words:

"In order to defray the expenses under these regulations, a fee of twenty cents will be charged for each permit granted; and shipments permitted to and from States heretofore declared to be in insurrection, shall, in addition thereto, be charged with the following fees, viz.: five cents on each one hundred dollars over three hundred, on all shipments *to* such State or section; and fifty cents on each one thousand pounds of cotton, and twenty-five cents on each one thousand pounds of sugar, permitted *from* such State."

The corresponding section in the series of March 31, 1863, was as follows:

"A fee of twenty cents will be charged for each permit granted for purposes of trade under these regulations; and in addition thereto the following fees shall be collected, viz.: for a permit to purchase or sell cotton or tobacco within any place or section in a State heretofore declared in insurrection, commercial intercouse with which has been permitted by the Secretary of the Treasury, under the license of the President, as aforesaid, and to transport the same therefrom to any place in the loyal States, four cents per pound of cotton, and two dollars per hogshead of tobacco; and for a permit to transport any other goods and chattels, wares and merchandise, designed for sale, except supplies for officers and soldiers, shipped by sutlers to or from any such place or section, in any insurrectionary State, five

per centum upon the invoice value thereof at the place of shipment."

The section prescribing charges in the series of September 11, 1863, was as follows.

"The following fees are prescribed:

Fee for administering oath and certifying affidavit	10 cents.
Fee for each authority from agent	3 dolls.
Fee for certificate of local special agent	10 cents.
Fee for each permit for purpose of trade	20 cents.
Fee for each permit to purchase cotton in any insurrectionary district, and to transport the same to any loyal State, per pound	4 cents.
Fee for permit so to purchase and transport tobacco, per hhd	2 dolls.
Fee for permit so to purchase or to sell and transport to or from such district, other products, goods, wares, or merchandise, five per centum on the sworn invoice value thereof at the place of shipment.	
Fee for each permit for individual, family, or plantation supplies, on every purchase over $20, and not over $50	5 cents.
Ditto on every purchase over $50 and not over $100	10 cents.
Ditto on every purchase over $100	15 cents.
For permits for individual, family or plantation supplies, not over $20 in amount, no charge is allowed, except revenue stamps on affidavits and certificates in districts under restriction, and no charges except 5 cents for permit, and 5 cents for each revenue stamp on affidavit and certificate, is allowed in States declared in insurrection. When purchases are less than five dollars, the permit officer may dispense with affidavits and certificates when no ground to suspect fraud or imposition appears."	

The regulations prohibited the transportation of any goods or merchandise to, from, or within, any insurrectionary district, except under permits, certificates and clearances, as in said regulations provided, and denounced forfeiture against all which should be transported in violation of the regulations; and directed the seizure, detention and condemnation thereof. They forbade the issuing of permits for such transportation, except on the payment or securing of the prescribed charges, and indicated the officers who alone could issue such permits: the defendant being the officer designated for that purpose for the district of Nashville. They provided that all loyal persons might apply for and obtain such permits.

Simultaneously with the promulgation of the regulations of 31st March, 1863, the President issued the following license:

"Whereas, by the Act of Congress approved July 13, 1861, entitled 'An Act to provide for the collection of duties on imports, and for other purposes,' all commercial intercourse between the inhabitants of such States as should, by proclamation, be declared in insurrection against the United States, and the citizens of the rest of the United States, was prohibited, so long as such condition of hostility should continue, except as the same shall be licensed and permitted by the President, to be conducted and carried on in pursuance of rules and regulations prescribed by the Secretary of the Treasury; *and whereas, it appears that a partial restoration of such intercourse between the inhabitants of sundry places and sections heretofore declared in insurrection in pursuance of said Act, and the citizens of the rest of the United States, will favorably affect the public interests*;

Now, therefore, I, Abraham Lincoln, President of the United States, *exercising the authority and discretion confided to me by the said Act of Congress*, do hereby license and permit such commercial intercourse between citizens of loyal States and

the inhabitants of such insurrectionary States, *in the cases, and under the restrictions, described and expressed in the regulations prescribed by the Secretary of the Treasury, bearing even date with these presents, or in such other regulations as he may hereafter, with my approval, prescribe.*"

And to the series of September 11, 1863, the President prefixed the following:

"The following revised regulations of the Secretary of the Treasury, having been seen and considered by me, are hereby approved."

The President and the Secretary of the Treasury, in all these, and other official papers relating to the subject, referred, in express terms, to the Act of July 13, 1861, as the source of the authority under which they acted.

The Secretary of War, on the 31st of March, 1863, issued an order, which was subsequently made specially applicable to the regulations of September 11, of that year, whereby he directed that no officer of the army, nor other person connected therewith, should authorize, or have any interest in, the transportation of any goods or merchandise, to or from any district in insurrection, except supplies belonging to the army or navy and moving under military or naval orders; and except also sutler's stores; and he also forbade all such officers and persons to interfere, in any way, with any purchase, sale or transportation, conducted under the regulations of the Secretary of the Treasury, unless under imperative military necessity in the place or district where the same should be conducted; or unless requested by an agent, or some other authorized officer, of the Treasury Department; in which case all commanders of military departments, districts or posts were required to render such aid in carrying out the provisions of the Act, and in enforcing obedience to the regulations of the Secretary of the Treasury, as could be given without manifest injury to the public service.

The Secretary of the Navy also issued orders of precisely the same general import.

The plaintiffs were merchants at Nashville, in the State of Tennessee, and had on hand, from time to time, between the 27th day of October, A. D. 1863, and the 11th day of June, 1864, large amounts of cotton, which "had been purchased in pursuance of "the license of the President and the regulations of "the Secretary of the Treasury in that regard," and which they desired to ship to the loyal States; and accordingly, at various times between the dates before mentioned, they applied to the defendant, who was then Surveyor of Customs at Nashville, for permits to transport the same to the loyal States; but the latter refused to grant such permits, except on payment of four cents for each pound of cotton so shipped, in addition to the other charges prescribed by the regulations of the Secretary of the Treasury. The plaintiffs, in order to be permitted to ship their cotton, complied with this requirement, paying the four cents per pound of the cotton, without making any formal protest against the exaction; and the aggregate of the payments thus made is the sum demanded in this action.

The circumstances attending the exaction and payment of these moneys cannot be better stated than in the words of the stipulation, which was given in evidence on the trial in the Court below, and which constituted the main portion of the evidence in the case. They are as follows:

"That, at the several times mentioned in said dec-
"laration, the plaintiffs applied, as therein al-
"leged, to the defendant, for permits to ship and
"transport said cotton from Nashville to a loyal
"State; that defendant, in obedience to regulations
"and instructions of the Secretary of the Treasury,
"refused to grant such permits or to allow said cot-
"ton to be shipped or transported, except on the
"previous payment by the plaintiffs of four cents
"per pound of that mentioned in the second count

"of said declaration; that the regulations and in-
"structions of the Secretary of the Treasury, requir-
"ing such previous payment, as a necessary condi-
"tion of the issuance of such permits, and directing
"the seizure, detention, and confiscation of all cotton
"which should be shipped or transported without
"such permit or without such payment, had been
"extensively published in and about Nashville, be-
"fore said applications were made, and it was a fact,
"well known and understood by the public and by
"the plaintiffs, that no such shipment or transpor-
"tation could be made, or would, by the defendant,
"be permitted, except on compliance with said re-
"quirement, and that defendant would seize and
"detain for confiscation all cotton so shipped or at-
"tempted to be shipped; that the plaintiffs made
"no formal protest to the payment of said four cents
"per pound of said cotton, but, in order to obtain
"said permits, and to be allowed to ship their said
"cotton, the plaintiffs paid the said several sums of
"money, in said declaration mentioned, to the de-
"fendant, as therein stated."

The regulations of the Secretary required that the so-called "fees" prescribed by them should be immediately paid over to a United States depositary, and the sums exacted by the defendant from the plaintiffs were accordingly so paid over.

At the time these exactions were made, Nashville was within the national military lines, and had been so for a considerable period; and there was, during all the time covered by these transactions, a large United States military force established there.

On the trial of the cause in the Circuit Court, the learned Judge who presided therein charged the jury:

First. That the Act of July 13, 1861, conferred power upon the Secretary of the Treasury to authorize these exactions.

Second. That whether said Act conferred such power or not, the action of the Secretary, in imposing, and that of the defendant in making them, was ratified and made valid by the Act of July 2, 1864, entitled "An Act in addition to the several Acts concerning commercial intercourse between loyal and insurrectionary States, and to provide for the collection of captured and abandoned property, and the prevention of frauds in States declared in insurrection."

Third. That plaintiffs could not maintain an action to recover back said exactions, even if they had been illegal, for want of having protested against them at the time of payment.

These charges present the questions to which we desire to draw the attention of this Court, and in all of which we insist that the Circuit Court erred.

First, then, we maintain that the Act of 1861 did not authorize the exactions in controversy.

And, first, we insist that neither the prohibition of intercourse, nor the provision respecting its license, nor that concerning its regulation, had any application to the District of Nashville, in the condition in which it was at the time the exactions were made. The Act, after providing that the President may, in the contingency mentioned, declare States and parts of States in insurrection, declares that thereupon "all commercial intercourse by and between the same and citizens thereof, and the citizens of the rest of the United States, shall cease, and be unlawful *so long as such condition of hostility shall continue;* thus making the prohibition of trade itself, and of course everything dependent thereon, applicable to any region only so long as the condition of hostility shall continue."

Now it is matter of public history, that long before the first of these exactions were made, the City of Nashville had been occupied by the National troops, and that it continued in their occupation and under the National control during all the time cov-

ered by the transactions out of which our claims arise. It would seem to be manifest, therefore, that the condition of hostility had ceased to exist, and that the provision in question could have no application there, for it surely cannot be maintained that a portion of our own country in which an insurrection had existed could be regarded as in a state of hostility after such insurrection had been finally suppressed therein by the National troops.

And this is the view which I understand to have been taken by this Court, in the Ouachita Cotton Case, 6 Wallace, 521, the decision in which proceeded upon the ground that the City of New Orleans, after the occupation by the forces under General Butler, ceased to be in insurrection.

Such, too, was evidently the view taken by President Lincoln, in reference to the very region in question, since, by his proclamation of the 22d September, 1862, he declared that slavery would be unlawful in all States and parts of States which should be in rebellion on the first day of the following January, and that he would, on the last mentioned day, issue another proclamation, designating the States and parts of States which should then be in insurrection; and accordingly, on the 1st January, 1863, he did issue his proclamation, designating the States and parts of States in rebellion, *no part of the State of Tennessee being so designated.*

These considerations appear to us conclusive. If the decision of this Court in the case referred to was sound, and we conceive that there can be no question that it was so; and if the action of President Lincoln, in his proclamation of emancipation, to which we have alluded, was just, then it seems clear that Nashville, at the time when the events about which we are inquiring occurred, was not in a condition of hostility; and if not, then certainly the provisions of law under which the exactions from us are sought to be justified, had no application at that time to the locality in which they were made.

But if this were otherwise, no authority for

making the exactions could be found in the Act in question.

The charge of the Circuit Court was that it authorized the *Secretary of the Treasury* to make them; and it would, perhaps, be sufficient for us to show that no such authority was conferred upon that officer; but, inasmuch as it may be claimed, and indeed seems in fact to be claimed, that the exactions were imposed by some sort of joint action of the President and the Secretary of the Treasury; and, therefore, that whether the Secretary had anthority to make them or not, is immaterial, provided the President had it, we will meet this view at once and endeavor to show that the act did not authorize either or both of those officers to make the exactions.

The powers which *were* conferred upon them by that portion of the Act, with which alone we have any concern, were plainly specified and clearly defined and distributed. They were, to the President, to *license* the commercial intercourse prohibited by the body of the section; and, to the Secretary, to *regulate* the trade so licensed; and also to appoint such officers at places where officers of Customs were not authorized by law, as might be needed to carry into effect the licenses of the President, and the rules and regulations of the Secretary. And these were *all* the powers that were conferred.

These powers, too, were distinctly distributed between the President and the Secretary. To the President was assigned the power to *license*; to the Secretary, the power to *regulate*. This is too clear, from the language of the Act, to admit of question. and has been repeatedly declared by this Court, particularly in the cases of the Sea Lion, 5 Wallace, 630, and The United States *v.* Lane, 8 Wallace, 185. And the powers so conferred were exclusive and incapable of being delegated. The Secretary could not license, either with or without the consent of the President; and the President could not prescribe regulations EITHER with or without the con-

sent of the Secretary. Neither could interfere with, or participate in, the exercise of the powers conferred upon the other.

And it hence results that no act of the President not incident to the power to license, and no act of the Secretary not incident to the power to regulate, or to the power to appoint officers before mentioned, would be valid; and further, that no act not incident to one or other of these powers would be valid, though done by both the President and Secretary together. Their powers, being incapable of delegation or participation, could not be enlarged by being conjoined.

The exactions, therefore, could not be lawfully imposed by the President unless the power to impose them was incident to the power to license; and they could not be imposed by the Secretary unless the power to impose them was incident to the power to regulate, or to the power to appoint officers. And if imposed by the President, they were not the more legal because it was done by means of regulations prescribed by the Secretary; and if imposed by the Secretary, they were not the more legal because the so-called regulation imposing them was approved by the President.

And we maintain that

Neither the power to license; nor the power to regulate, nor the power to appoint officers, involved the power to make any exactions of money whatever.

And first, as to the power to license:

Its *mechanical* execution certainly required no such exactions. The officials about the President's office were then, as they are now, paid fixed salaries for their services, and all other expenses of the office were provided for out of the public treasury.

And just as little were such exactions requisite or conducive to the *moral exercise* of the power. The discretion vested in the President in this regard was plainly specified in the Act, and embraced the following particulars, and no others:

He might license or not.

He might extend his license to the whole, or restrict it to any part of the insurrectionary region.

He might permit trade in such articles, and in such only, as he might see fit.

He might limit the duration of the license to such time as he might think proper.

He might grant it to such persons, and to such only, as he might judge best.

And it will not, we think, be claimed that the exaction of money could aid the President in the exercise of his discretion in either of these particulars.

But not only so. This careful enumeration of the particulars of the President's discretion, impliedly, but necessarily, excludes all discretion in any other particulars. *Expressio unius; exclusio alterius.* It, therefore, impliedly *forbade* the exercise of such a power as that against which we are contending.

And the same effect was produced by the provision that the trade which should be licensed should be carried on in pursuance of regulations prescribed by the Secretary of the Treasury. The law having prescribed this condition or qualification, no other could legally be imposed by the President or any one else, since the enactment with this qualification was equivalent to a declaration—and, indeed, was, in terms, a declaration—by the Legislature, that the trade, when licensed, *might* be carried on *subject to the regulations of the Secretary.*

Nor was the power to impose such exaction less imperatively excluded, in our judgment, by the provision that the President was only to license *as he might think most conducive to the public interest*, in which particular Congress only adopted the view that has prevailed throughout Christendom since the peace of Amiens—to wit, that licenses of this character are not matters of special grace, but of national policy. It surely could not have been contemplated that the President would compel private persons to *pay* for what was granted *for the good of the public.*

Nor, again, was the exercise of such a power less incompatible with the *purpose* for which the power to license was conferred. It cannot be doubtful what that purpose was: it was to permit trade *when that trade should be conducive to the public interest.* To suppose that Congress, while conferring such a power, for such a purpose, intentionally accompanied it with another power, the necessary effect of the exercise of which would be to obstruct, and the possible effect of which might be to defeat, the attainment of the principal object in view, would be to attribute to the National Legislature a degree of fatuity, with which, we trust, that it is not chargeable.

And, on general principles, the power to license does not involve the power to make exactions of money. In the cases where, in connection with the power to license, such exactions have been imposed —and there doubtless have been such—this has been done under the idea of thereby *regulating* the subject of the license; as in the case of the liquor traffic and others. The imposition of such exactions is not, nor has it been considered, a necessary or natural incident, nor, indeed, an incident at all of the power to license.

And, in the next place, as to the power to regulate. The imposition of such exactions was not more requisite, or conducive, to the proper exercise of *this* power, than to that of the power to license. It could not prevent, nor have any tendency to prevent, any abuse of the license, nor any irregularity in its use; nor, in short, to regulate, in any way, the trade to be carried on under it. It could, therefore, serve no purpose of regulation.

But not only so. The existence of such a power in the Secretary of the Treasury would have been even more incompatible with the purposes for which the power to license was conferred, than it would have been in the hands of the President; since it would be an instrumentality whereby the Secretary, a subordinate of the President, might thwart, and even

nullify the license of the latter, and thus prevent the prosecution of the licensed trade.

The legislation to which we have referred, whereby impositions of money have been made under the idea of regulation, cannot militate against the position we assume, since the cases in which such legislation has been sustained by the Courts bear no analogy to the present one. There can be no pretense that in the present case the exactions were imposed with any view to regulate the licensed trade.

Finally, if the power to make regulations involved the power to make exactions of money, nearly every important officer of the Government would be involved with the latter power, since nearly every one of them possesses the former. In rare instances express authority is conferred by law upon such officers to prescribe fees for services to be performed under their regulations, or under the law, but in most cases the Acts of Congress themselves descend to the minutest particulars of service, fix the fees to be allowed, and forbid the exaction of any other compensation, under severe penalties. Such is, especially, the case in regard to services performed by collectors of customs, under regulations prescribed by the Secretary of the Treasury concerning the importation of foreign merchandise. And wherever a claim has been set up by any such officers, as has sometimes been done, of a power to impose fees for services rendered under their regulations, and such claim has come in review before the courts, it has, we think, invariably been set aside.

In the last place, then, as to the power to appoint officers, which was conferred by the Act upon the Secretary.

There was nothing in this which authorized him to impose exactions of money. The power to *appoint* officers, and the power to *pay* them, or to provide the means of paying them, are very different things; and to infer a grant of one, from a grant of the other, would be utterly unwarranted.

Nor is such an inference, in the present case, in

any way aided by the fact—if it be a fact—that the Act did not prescribe the manner in which the expenses of enforcing the regulations were to be defrayed. On the contrary, this very silence is an answer to any claim of such authority. Had it been the intention of Congress to confer such a power on the Secretary, it would, most assuredly, have done so in clear terms, as it had been accustomed to do in all similar cases before, and as it afterwards did in respect to this very subject of restricted intercourse, as we shall soon have occasion more fully to notice.

But the Act *did* contain, as we think, a clear intimation as to how the expenses were to be met. It provided that officers of the Customs, and other officers, should receive, for their services, *such fees and compensation as were then allowed for similar services under other provisions of law.* Now, *officers of the Customs* were paid out of the public treasury, and we submit that the clear inference from this provision is that the other officers were to be paid in like manner.

And here, as in reference to the power to regulate, it may be remarked that if the power to provide compensation for the officers to be appointed could be inferred from the power to appoint them, every head of a department, and many other officers of the Government, might claim a like power, for they are often invested with the power to make appointments, and that by laws which certainly contain no clearer provisions as to how their appointees are to be paid. And on the whole, we cannot but regard the assertion of such a claim as little short of preposterous.

But still clearer, if possible, is it, that no power conferred by the Act involved that of imposing the exactions actually made, and *for the recovery of which this action was brought.*

The Secretary of the Treasury, by his regulations, caused to be drawn from those who availed themselves of the President's license—in the form of fees for permits, and certificates, and services of various

kinds—large sums of money, exclusive of the so-called fees of which we complain; but of the exaction of those sums no complaint was ever made, so far as we know; and, doubtless, because it was considered that, whether strictly legal or not, they bore—most of them, at least—some reasonable proportion to the services for which they were ostensibly demanded, and seemed to have some relation to the supervision and regulation of the licensed trade. However this may be, *those* exactions are not the subject of controversy in this suit, the record of which, therefore, presents no question as to their validity, and we make none respecting them except by way of strengthening our argument against those to which we do object. *But in addition to the fees for actual services performed under the regulations*, and to the other charges bearing a more or less reasonable proportion to the character and importance of the acts or things in respect of which they were demanded, the Secretary imposed—nominally as a charge for the granting of a permit to purchase cotton and ship it to the loyal States—*four cents per pound of the cotton to be so purchased and shipped;* and the question now presented to the Court is, whether the Act of Congress authorized *these latter* charges.

And what were those charges? Our answer is, *taxes;* nothing more, and nothing less.

They certainly were not *fees*. No law authorized such fees; they were not paid to any officer or other person for any services rendered; and they were altogether disproportionate to any which could be rendered in connection with the supervision of the licensed trade.

They were not *military contributions*. They were not imposed by the military authorities, but by the Secretary of the Treasury; and all military persons were carefully excluded from any connection or interference with the trade in respect to which they were imposed, except, indeed, to support the civil officers, should occasion require such support.

And they were not imposed upon the *enemy*, but on loyal citizens, no others being permitted to avail themselves of the President's license.

Nor were they levies imposed for the support of government, civil or military, within the insurrectionary States. They were imposed, as other taxes are imposed, for purposes of *revenue;* they were directed to be paid, and were paid, to the designated depositaries of the public revenues; and they were applied, like other revenues, to its general uses and purposes.

The authorities cited in the brief I have had the honor to file, are decisive as to the character of the exactions.

Cooley, in his work on Constitutional Limitations, page 496, says: "Every burden which the State imposes upon its citizens with a view to revenue, either for itself or for any of the municipal governments, or for the support of any of the governmental machinery and any of the political divisions, is imposed under this power of taxation, whether imposed under the name of tax or under some other designation. The license fees which are sometimes required to be paid by those who follow particular employments are, when imposed for purposes of revenue, taxes; the tolls upon the persons or property making use of the works of public improvement, owned and controlled by the State, are a species of tax," &c.

And at page 586: "License laws are of two kinds; those which require the payment of a license fee by way of raising a revenue, and are therefore the exercise of the power of taxation, and those which are mere police regulations, and which require the payment only of such license fee as will cover the expense of the license and of enforcing the regulations."

Blackwell, on Tax Titles, page 1, says: "Taxes are defined to be burdens or charges imposed by the legislative power of a State upon persons or property to raise money for public purposes."

Story, on the Constitution, vol. 1, page 867, says: "In a general sense, all contributions imposed by the Government upon individuals for the service of the State are called taxes, by whatever name they may be known, whether by the name of tribute, tythe, talliage, impost, duty, gabel, custom, subsidy, aid, supply, excise, or other name."

In Brown *v.* The State of Maryland, 12 Wheaton, 419, this Court decided that a license fee of fifty dollars, imposed on all importers of foreign articles into the State of Maryland, as a condition of permission to sell such articles, was a tax upon them.

In the License Tax Cases, 5 Wallace, 462, this Court held that a requirement that persons engaged in certain trades and businesses, including those of selling lottery tickets and retailing spirituous liquors, should take out a license and pay certain prescribed charges therefor, was only a mode of imposing taxes on the licensed business, and that the prohibition, under penalties, against carrying on the business without licenses, was only a mode of enforcing the payment of such taxes.

And in Cooley *v.* The Board of Wardens, 12 How., 299, this Court said: "Certainly it is the thing, and not the name, which is to be considered."

Other authorities, which will be hereafter noticed in connection with another branch of the case, are to the same effect. We consider it, however, almost superfluous to cite authorities upon a point which seems so clear, especially as the brief which has been furnished on behalf of the Government treats the exactions as taxes.

The question for present consideration, then, is, whether the Act of July 13th, 1861, authorized the imposition of a tax of four cents a pound on all cotton which should be shipped from insurrectionary to loyal States during the war. And as this tax was actually imposed by the Secretary of the Treasury—and the charge of the Circuit Court was that the Act of 1861 authorized him to impose it—the question might, as we have before intimated, be

answered to the inquiry whether the Act conferred such authority upon *him*; but as the fact of the imposition by the Secretary alone may be questioned, this point is waived for the present. It is manifest, however, that the tax was imposed either by the *President*, or the Secretary, or *both*; and it is also manifest that whoever imposed it, might just as legally have imposed *any* tax, either greater or less than four cents per pound. The question, therefore, is: *Did the Act authorize either or both of those officers to levy a tax*, AD LIBITUM, *on all such cotton?*

And can it be necessary to do more than state such a question to insure a prompt and decisive answer in the negative?

Congress COULD *not have conferred such a power had it intended so to do.* That power was *to tax, at the discretion of an executive officer*, all the cotton shipped under the President's license; and, of course, without any regard to constitutional rules in respect to uniformity, proportion to population, or other circumstance. We presume that it will not be contended, for a moment, that this could be done at any other time than in a time of war; and we doubt not that the attempt will be made to sustain the supposed grant of power by Congress, and its exercise by the President, or Secretary, by reference to the state of war at the time.

But we submit that the existence of war could make no difference. Doubtless many things, and even many things contemplated by the Act of 1861—such, for instance, as the prohibition of trade between the two sections of the country—which would otherwise have been unconstitutional and invalid, were justified and brought within constitutional limits by the existence of the war. *But the things which were, or could be, thus affected, were such, and such only, as the war made necessary.* But the present case and question concern none of these. The question here is one of *taxation*—and of taxation for *revenue*—as is plain from the character of the exac-

tions and the circumstances of their imposition. It is not one as to the right or power of Congress to prohibit trade between the loyal and disloyal districts, or to provide for the total or partial removal of that prohibition, or to establish or authorize the President or the Secretary of the Treasury to establish suitable regulations for the government of such trade as should be permitted; or even to authorize either or both of those officers to prescribe reasonable and proper fees for services actually rendered in the enforcement of such regulations; *but it is as to the power of Congress to authorize the President, or the Secretary, or both, to levy upon all cotton which should be transported between the loyal and disloyal sections a tax, at their discretion, not for any purpose connected with the supervision of the licensed trade, nor as a military contribution, nor for the support of government, civil or military, within the insurrectionary States,* BUT FOR GENERAL PURPOSES OF REVENUE.

And how can such a question admit of argument? The Constitution was certainly as operative during the war as it was before, or has been since. It undoubtedly permitted some things to be done, alike by the Executive and the Legislature, during the war, which it would not permit in time of peace; but those things were acts connected with the war, and such as the war made necessary. The levying of taxes for revenue was not among such acts. On the contrary, this is an act required alike by the exigencies of peace and war, and which is regulated, alike in peace and war, by the provisions of the Constitution. If this be not so—if the raising of revenue in time of war is to be treated as a war measure, which can be prosecuted without regard to constitutional restraints—then, indeed, all the provisions of the Constitution respecting taxation are, during war, suspended, and all our property is, so long as war prevails, at the absolute disposal of the Government and its officers.

But Congress made no attempt to confer any such

power as that supposed. It did not *intend* to confer it by the Act of 1861. The considerations which sustain this position are, in our judgment, absolutely overwhelming.

There is certainly not one word to be found in the Act which expresses any such intention; and how is this to be accounted for if any such existed? It certainly was not one likely to be left to mere implication; nor was the power in question one likely to be conferred without careful guards and limitations; of which Congress itself gave decided proof in the subsequent Act of 1864, as we shall have occasion presently to notice.

The power was not necessary nor requisite to the attainment of any purpose contemplated by the Act. On the contrary, it was directly antagonistical to the chief end in view, which was the re-establishment of trade between the two sections. And this end was of great importance. It was absolutely indispensable to the well-being of the inhabitants of the insurrectionary districts which might be brought under the control of our troops; since all commerce between them and other portions of the insurrectionary States would then be cut off. It was very important to the loyal States; as the obtaining of cotton, especially, was necessary to the prosecution of some of the most valuable branches of industry carried on by them. This consideration was alluded to by the Court, in the case of The United States *v.* Lane, 8 Wallace, p. 198. And it was of great consequence to the Government, because it tended to allay the discontent, both at home and abroad, occasioned by the scarcity of Southern products, and because it enlarged the market for the national currency and securities.

Congress, too, must have recognized the right of all citizens of the United States freely to trade with all sections of the country, and its own duty to protect them in the exercise of that right; and though it found itself unable to extend such protection, or obliged, by a proper regard for the public interest,

to withhold the enjoyment of the right, for a certain period of the war, it surely would not think itself justified in subjecting those to whom it belonged to extortionate exactions, at the discretion of executive officers, in consideration of its restoration, when such restoration could be made, not only without prejudice, but actually with advantage to the public interest.

Again, it is manifest that such a power would be liable to the greatest abuse, and to be prostituted to purposes of favoritism, corruption and oppression, against which the high character and position of the officers to whom it was confided would be no guaranty, for the reason that those officers could not possibly direct, in person, the details of its execution.

These considerations afford ample grounds for the conviction that Congress could not have intended to confer the power in question; but we think that it has, by its own acts, placed this point beyond question.

In the first place, we insist that if it can be supposed to have authorized any exactions whatever, by the Act of 1861, it must be considered as having, by the same Act, limited those exactions to "such fees and compensation" for services under the Act, and under the rules and regulations adopted under its authority, as were then "allowed for similar services under other provisions of law." The law having thus fixed the *fees* and *compensation* to be paid, it was not competent for the Secretary to prescribe any others, and there could be no pretext for making exactions for any other purpose.

In the next place, Congress, by the 75th Section of the Act to provide internal revenue, passed on the 1st day of July, 1862, imposed a tax of one-half of one per cent. per pound on all the cotton in the country, and on the 7th March, 1864, this tax was increased to two cents per pound. Now, surely it cannot be supposed that Congress would have imposed these taxes upon such cotton as should be

shipped under the President's license, if it had understood that it had already vested in the President and the Secretary of the Treasury power to tax such cotton without limit.

Again, the 11th Section of the "Act in addition to the several Acts concerning commercial intercourse with the insurrectionary States, and to provide for the collection of abandoned property," approved July 2d, 1864, provided "That the Secretary of the Treasury, with the approval of the President, shall make such rules and regulations as are necessary to secure the *proper* and *economical* execution of the provisions of this Act, and shall defray all expenses of *such* execution from the proceeds of fees imposed by said rules and regulations, of sales of captured and abandoned property, and of sales hereinbefore authorized."

Now, it will be observed that Congress here expressly conferred the power to impose "fees." Why was this, if such power had been already conferred by the Act of 1861?

It will also be observed that the power was *only* to impose fees. Would this have been so, had Congress supposed that the Act of 1861 had conferred power, not only to impose *fees*, but *taxes*, *ad libitum?*

Again, it is to be especially noted that the extent of the exactions which might be imposed was here limited to such as were necessary to secure the *proper* and *economical* execution of the provisions of the Act, so that it would appear very certain that, under *that* Act, at all events, no such exactions as those we complain of could be imposed.

And, lastly, such power as *was* conferred upon the Secretary, was required to be exercised "with the approval of the President."

Here, then, we have practical evidence of what guards and limitations Congress thought requisite to be thrown around the power to make exactions of money. And who can believe that the same Legislature which made such careful provisions respect-

ing the comparatively unimportant power here conferred, intended, by the Act of 1861, in which not a word to that effect is found, to confide to the uncontrolled discretion of executive officers, a power under which exactions to the amount of nearly three hundred thousand dollars could be made from one firm in less than a year!

But, finally, and as if to place the construction of the Act of 1861 beyond all possibility of cavil, Congress provided, by the 4th Section of that of 1864, that the *prohibitions* and *provisions* of the former Act, and of the Acts amendatory and supplementary thereto, should apply to all commercial intercourse by and between persons residing or being within districts within the existing or future lines of national military occupation in the states declared in insurrection, whether *with each other*, or with persons residing or being within districts declared in insurrection, and not within the lines; and by the 5th Section of the same Act, that whenever any part of a *loyal* state should be under the control of insurgents, or should be *in dangerous proximity* to places under their control, all commercial intercourse *therein* and *therewith* should be subject to the same *prohibitions* and *conditions* as were created by said Acts, as to such intercourse between loyal and insurrectionary states, for such time and to such extent as should from time to time become necessary to protect the public interests, and be directed by the Secretary of the Treasury, with the approval of the President.

Now, it is manifest that if under the Act of 1861, taxes at the discretion of the President, or of the Secretary of the Treasury, could be imposed on commercial intercourse between insurrectionary districts and the loyal States, such taxes could also be imposed, under the Act of 1864, on such intercourse *with each other*, not only of persons in insurrectionary districts within the national military lines, but of persons in loyal districts under the control of insurgents; and even of persons in loyal districts *in*

dangerous proximity to places under their control, so that, according to this view, loyal people in loyal States might be taxed at the discretion of the President and the Secretary of the Treasury, for buying and selling with each other! Of course this would be preposterous, and it shows, as we think, conclusively, that Congress did not imagine that it had conferred by the Act of 1861, any such power as that supposed.

And here we might, perhaps, with propriety leave this branch of our case, for we confess that if what we have urged does not make clear the utter absence of any authority in the Act of 1861 for the imposition of these exactions, we greatly misconceive the force of the considerations we have presented; and we suppose it to be unnecessary for us, especially in view of the state of the record in the case, to go beyond the Act, and inquire whether such authority could be derived from any other source. The charge of the Circuit Court was that the Act of 1861 conferred the authority; the President and the Secretary both referred to that Act as the source of their authority; the learned Attorney-General and Solicitor-General, in their brief, found their claim of legality for the exactions upon its provisions, and the decisions of this Court bearing upon the subject evidently proceed upon the idea that the whole matter of intercourse with the insurrectionary districts, including the powers of the President and all the other officers of the Government, depended upon that and subsequent Acts. (The United States *v.* Lane, 8 Wall., 185; The Sea Lion, 5 Wall., 630; Ouachita Cotton, 6 Wall., 521; M'Kee *v.* The United States, 8 Wall., 163; Coppell *v.* Hall, 7 Wall., 542; The Reform, 3 Wall., 632; Blakely's Case, 2 N. & W., 323.) It would seem to be sufficient, therefore, if we showed that the Act of 1861 conferred no such authority. Nevertheless, as it is insisted in the brief for the Government that we have placed too narrow a construction upon the word regulations, used in the Act—a claim which, as we conceive, can only be made good by showing that

the word has there a larger signification than the natural and ordinary one; and as there seems to be a somewhat widespread impression that in some way or other the powers of Congress and of the President in time of war are unlimited, or, at least, indefinite, and that, consequently, nothing that was done by them during the war can be questioned, and we are persuaded that it will be upon some such notion as this that the attempt will be made to defend the exactions we are now seeking to recover, we are induced to give some consideration to these topics.

And, first, as to the meaning of the word regulations.

We insist, in the first place, that whatever may be the proper signification of that word, the considerations we have adduced show conclusively that Congress could not have intended to use it in any sense which would involve a grant of the power to the Secretary to make these exactions.

In the next place, we maintain that the exception taken to our construction of the word is unfounded. In support of that exception, reference is made to the use of the word in the Constitution. We deny that it can derive any support from that source.

The only clauses of the Constitution in which it can be claimed that the word, or any kindred one, is employed in a way at all analogous to that in which it is used in the Act of 1861, are those conferring power on Congress to make needful rules and regulations respecting the territory and other property belonging to the United States; to make rules for the government and regulation of the land and naval forces; to coin money and regulate the value thereof, and to regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

And, in the first place, these are all high legislative powers; and the language employed in the Constitution respecting them is that which its framers thought fit for conferring them upon Congress—the sole repository of legislative power in the Gov-

ernment. It would not be surprising, therefore, if the words were there employed in a broad and comprehensive sense. But this would afford no ground for supposing that they would be employed in as comprehensive a sense in an Act of Congress conferring power upon a mere executive officer.

But, in the next place, there is nothing in the use of those words in the Constitution, nor in any authoritative construction which has ever been given to them by the Legislature or by the Courts, which impugns, even by comparison, that which we have applied to the word regulation, in the Act of 1861. We are not aware that it has ever been held that any legislation not legitimately falling within the character and objects of regulation, according to the natural and proper meaning of the word, as applied to the given subject, could be supported by reference to the clauses in question, or to either of them. We do not think that it was ever held that either of those clauses warranted legislation, under color of regulation, which was not reasonable and conducive to the advantage of the subject regulated, or to its proper control, direction, or management.

We are quite aware that not only the power to lay duties, generally, but the power to lay them for purposes of revenue, of fostering domestic manufactures and other products, and of retaliating upon other countries their unfriendly commercial legislation; and also the power to lay embargoes, and, perhaps, other powers affecting commerce, are sometimes spoken of as being incidental to, and derived from, the power to regulate commerce; and that even Mr. Justice Story, in his Commentaries on the Constitution, uses language of this import. Story on Const., vol. 2, § 1088.

But we conceive that this language is inaccurate, and that if its use implies anything more than want of care in the selection of words, it evidences some confusion of ideas on the subject.

That taxes, whether imposed on imports or on exports, or on other commodities, may be, and are,

sometimes laid with a view to the regulation of commerce, may be freely admitted; and it may also be admitted that, *when laid for such a purpose*, their imposition is incident to, or rather *constitutes*, a regulation of commerce. But, on the other hand, while it is certainly true that Congress possesses the power to lay duties, and to lay duties for revenue; and while there may be no occasion for denying that it also possesses the power of laying them for purposes of protection, it by no means follows that any of these powers are incident to that of regulating commerce. On the contrary, it is most certainly true that the power to lay taxes, duties, imposts and excises—the power about which we are now concerned—is *not* incident to the power to regulate commerce, but is derived from the plain and express grant of the Constitution.

And no one has stated the true doctrine upon this subject more clearly than Mr. Justice Story himself. He says, in sec. 1068 of his work on the Constitution: "The power to regulate commerce is not at all like that to lay taxes." "There is no analogy, then, between the power of taxation and the power of regulating commerce;" and in sec. 1069, when speaking of the prohibition of the States to lay imposts or duties on imports or exports, he says: "The laying of such imposts and duties may be, and, indeed, often is, used as a mere regulation of commerce by governments possessing that power. But the laying of such imposts and duties is as certainly, and more usually, a right exercised as a part of the power to lay taxes, and with this latter power the States are already intrusted, so that the probibition is an exception from the acknowledged power of the State to lay *taxes*, and not from the questionable power to regulate commerce. *Indeed, the Constitution treats these as distinct and independent powers.*"

And in this Judge Story does but echo, in substance, the words of Chief Justice Marshall, in Gibbons *v.* Ogden, 9 Wheaton's Rep., 1, where the latter says: "It is true that duties may often be,

and in fact often are, imposed on tonnage, with a view to the *regulation of commerce;* but they may also be imposed with a view to *revenue;* and it was, therefore, a prudent precaution to prohibit the States from exercising this power. The idea that the same measure might, according to circumstances, be ARRANGED with different classes of power, was no novelty to the framers of the Constitution. Those illustrious statesmen and patriots had been, many of them, deeply engaged in the discussions which preceded the war of our revolution, and all of them were well read in those discussions. *The right to regulate commerce, even by the imposition of duties, was not controverted; but the right to impose a duty for the purpose of revenue produced a war as important, perhaps, in its consequences to the human race, as any the world has ever witnessed.*"

And this is precisely the view taken by us, and which is fully supported by the cases cited in our brief.

In the case of The Mayor, &c., of New York *v.* The Second Avenue Railroad Company, 21 Howard's Pr. Reps., 257, a tax of fifty dollars per year, imposed, nominally, as a fee for a certificate of license to run a car on a street railroad, under pretence of *regulating* the running of railroad cars in the City of New York, was declared illegal, Judge Ingraham, who delivered the opinion, saying: "This is only a taxing power under the guise of establishing ordinances for good rule and government."

This decision was affirmed by the Court of Appeals, and reported in 32 N. Y. Repts., 261, the Court declaring in strong terms that the imposition of the so-called "fee" was the levying of a *tax*, and not an exercise of the power of *regulation.*

The same points were again decided by the Court of Appeals in the case of The Mayor, &c., of New York *v.* The Third Avenue Railroad Company, 33 New York, 42.

In Kip *v.* Paterson, 2 Dutch., 298, it was held that an ordinance requiring all persons who sold hay and

delivered the same within the limits of the city to pay a fee of five cents was unreasonable and illegal. The exaction was held to be clearly a tax, and as no power to tax had been conferred upon the city, it was declared to be illegal; and its imposition was declared not to be "a reasonable mode of regulating the police and preserving the peace and good order of the city."

In Dunham *v.* The Trustees of the Village of Rochester, 5 Cowen, 462, the Court held that the Trustees of the Village of Rochester could not, under a power "to make such prudential by-laws, rules and regulations, as they from time to time might deem meet and proper, relating to taverns, gin shops, and huckster shops, impose a tax for a license of from five to thirty dollars *per annum*.

And in this case the Court, among other things, declared such a tax objectionable as being *in restraint of trade*. What would they have said of a tax of three hundred thousand dollars per annum, and of a claim to impose it as a *regulation* of trade?

The case of Commonwealth *v.* Stodder, 2 Cushing, 562, is especially full and to the point.

It was one upon complaints for breaches of an ordinance of the City of Boston. In 1847 the State Legislature passed an Act containing the following provision: "The Mayor and Aldermen of any city in this Commonwealth shall have power, from time to time, to make and adopt such rules and orders as to them shall appear necessary and expedient for the due regulation in such city, of omnibuses, stages, hackney coaches, wagons, carts, drays, and other carriages and vehicles whatsoever, used or employed, whether by prescribing their routes and places of standing, or in any other manner whatsoever, and whether such carriages and other vehicles as aforesaid are used for burden or pleasure, or for the conveyance of passengers, or freight, or otherwise, and whether with or without horse or other animal power."

The Act further provided that: "The Mayor and

Aldermen of any city may annex penalties for the violations of any such rules and orders as are authorized in the first section, not exceeding twenty dollars in any one instance; which penalties may be recovered for the use of the city by complaint before the Police Court of such city, or any Justice of the Peace in a city where no Police Court is established."

Under alleged authority from this Act the city authorities of Boston made an ordinance requiring all hackmen to take out a license from the city and to pay a fixed sum for such license, which sum was regulated at from one to twenty dollars, according to the style of vehicle, and establishing a penalty of from five to twenty dollars for every violation of the ordinance. This action was brought to recover the penalty. Defendant admitted driving a hack without a license, but insisted that the ordinance was unauthorized.

The Court said (p. 572): "As to the requisition of a payment of money, operating, as it does, as a direct tax upon the vehicle to be used, we can find no authority for this provision of the ordinance. Taxes are to be levied under the provisions of general laws enacted by the Legislature. We look in vain for authority for it, either in the city charter or the statutes of the Commonwealth. The Act of 1847, under and by virtue of which this ordinance was professedly adopted, merely authorized the Mayor and Aldermen to adopt rules and orders for the due regulation in said city of omnibuses, stages, &c. The power here conferred was not a tax-levying power. The title of the Act was, 'An Act to prevent obstructions in the streets of cities, and to regulate hackney coaches and other vehicles.' All the apparent objects of the Act may be secured by due regulations as to the time, places, and mode of using such vehicles, irrespective of any payment of a specific duty or tax upon them, as provided in the ordinance."

And again, at page 573: "If the sum here required

to be paid was a mere provision for paying the expenses incident to giving a license, as was apparently the statute of 1796, § 32, requiring the payment of one dollar for each license, it might be unobjectionable if the requiring the license was itself well authorized; *but the dissimilarity in the sums required to be paid, varying as they do from one dollar to twenty dollars, for a vehicle, precludes us from any assumption of that sort. Nor can any such tax be sustained upon the ground suggested in the argument, that the sum levied is not more than sufficient to indemnify for the expenses incident to the supervision of hackney coaches, omnibuses. stages, &c.* In *no* aspect in which we have been able to regard the part of this ordinance, can we view it in any other light than as an assessment of a tax upon the owners of these vehicles. As such, the Court are of opinion that it was without legal authority, and as the obtaining of a license in all cases required this payment, the ordinance, so far as it ordains that no person shall set up, use, or drive, in the City of Boston, any omnibus, without a license from the Mayor and Aldermen, under a penalty of not less than five, nor more than twenty dollars, every time such carriage is used, is illegal, and cannot be enforced."

And we think that we are quite warranted by these authorities in denying that the power to prescribe regulations involves, upon any natural, ordinary or admissible construction, that of imposing such exactions as those in controversy.

But the very comparison sought to be drawn between the Constitution and the Act of Congress affords an answer which, as we conceive, admits of no reply, to whatever may be urged in justification of these exactions, under the power of regulation given to the Secretary of the Treasury. It is this: The power of regulation conferred by the Act upon the *Secretary* cannot certainly be *greater* than that conferred by the *Constitution* upon *Congress;* but if Congress were to attempt, under color of its power

to regulate trade among the States, to impose a tax of four cents per pound on all cotton shipped from one section of the country to another, such an attempt could not be regarded otherwise than as preposterous.

As we have said, therefore, the only way in which the power to impose such exactions as those in controversy can be shown to be involved in a grant of power to make regulations, is by showing that the word regulations has been used in a *larger* sense than the natural one. And we conceive that the only mode in which even a plausible attempt can be made to do this; or to show any authority whatever for the exactions, is by referring to the state of war at the time they were imposed; to some supposed omnipotence, or, at least, some extroardinary power of the President or of Congress, in consequence of the war; to the interdict, by the fact of war, of trade between the two sections, and a supposed power in the President, independent of legislation, to permit or prohibit such trade at his sole discretion, and to permit it on such terms and conditions as he might see fit to impose, or to other like considerations. And accordingly we suppose, as we have before intimated, that this will be the line of argument by which it will be sought to uphold the exactions.

And we conceive that the argument will be something like this: The war suspended all commercial intercourse between the inhabitants of the insurrectionary and those of the loyal districts, except such as might be permitted by the Government; any such intercourse which was, in fact, permitted, was, therefore, a matter *of favor* or *grace*, and not of *right*, and might, consequently, be granted or withheld at the discretion of the Government; and, if granted at all, might be granted upon such terms and conditions as the Government might see fit to impose. The President, as Chief Magistrate, or as Commander-in-chief of the armies, was the representative of the Government and exercised its powers in this regard; antecedent, therefore, to any leg-

islation on the subject, he possessed plenary power to make the exactions in question, and, consequently, either the Act of 1861 must be construed in the light of these principles, and its term enlarged so as to embrace the power in question, or the power must be held to have been *retained* by the President notwithstanding the Act.

But to all this our answer is simple, and, as we think, conclusive. We admit that the existence of hostilities operated, *ipso facto*, as an interdict of commercial intercourse between the loyal and the disloyal districts, except by permission of the Government. And we are not now concerned to deny the constitutional or legal right of the Government to attach such terms and conditions as it might think proper, to its permission to engage in such interdicted trade. But we deny that, independent of legislation, the President could exercise that power, or that Congress could delegate it either to the President or the Secretary of the Treasury.

As to the power of the President, we maintain that, independent of legislation, he could exercise only such control over the subject of intercourse with the insurrectionary regions as was justified by military considerations; that over the insurgents, over insurgent territory and property, and over intercourse with insurgents, his power, independent of legislation, was that of a military commander, and nothing more. He could, doubtless, exercise such control over intercourse with the enemy as might be necessary to prevent its embarrassing military operations, and even such as might be requisite to their successful prosecution. He might also levy contributions upon the enemy for military purposes; might even destroy the property of the enemy when necessary to the success of military proceedings; and, after acquiring possession of enemies' territory, might set up and maintain temporary governments therein, and levy contributions for their support. But all these powers are very different from that of prescribing the terms on which general trade

might be carried on between the loyal and insurrectionary districts. The latter power never belonged to the President, either before or after the adoption of the Act of 1861; the former ones belonged to him both before and after its adoption.

As to the power of Congress, we repeat that we are not at present concerned to deny its constitutional or legal right to attach such terms and conditions as it might think fit to its permission to engage in the interdicted trade. We might, perhaps, were we so disposed, raise a serious question, whether so unlimited a power—a power we mean to impose terms or conditions not appropriate to the subject—could be exercised in respect to intercourse with such portions of the insurrectionary States as had come to be permanently occupied by our troops, and were therefore restored to the control of the national Government; and we certainly may with justice deny that Congress had any *moral* right to impose any terms or conditions upon such intercourse not required by a due regard for the public interests and welfare; and we have a right to insist upon the latter consideration when the question is, what did Congress *intend* to do, and not what had it the *power* to do. At present, however, the latter is the question we are considering, and we say that the power to determine upon what terms and conditions general trade might be carried on between the loyal and insurrectionary sections of our country, was a *sovereign* power, which could be exercised by the Legislature alone. This would have been so had the insurrectionary States been, as they were not, foreign countries; and had the question been, as it was not, as to trade with the enemy, and within the enemy's lines; but much more was it so when the question was as to trade with those who, though in insurrection, were still citizens, and whose place of residence, though declared insurrectionary, was nevertheless within our own military lines, and under the national control. And this power, being sovereign, and one, therefore, to be exercised by the Legisla-

ture alone, could not be delegated to the President, or to any one else.

And, accordingly, Congress did, as we maintain, exercise this power, and did not delegate, or attempt to delegate it, to any one. On the contrary, it passed an Act declaring in what terms such trade might be carried on, which were that the parties engaged in it should conform to such regulations as should be prescribed by the Secretary of the Treasury—meaning, necessarily, by the term regulations, what the word naturally imports; because, had it meant more, it would have involved a delegation of legislative power to the Secretary. And, as we have before stated, Congress having prescribed this condition, it was not competent for any one to impose any other.

But whatever may be held as to the power or the intention of Congress to delegate to the President, or to the Secretary, the right to prescribe appropriate terms and conditions of the allowance of trade with the insurrectionary districts, we maintain it to be incontrovertible that no such power as was actually exercised could be so delegated. That power was, as we have seen, to levy taxes for revenue. The exactions made were none the less taxes because they were—if, indeed, such was the fact—nominally imposed as the condition of permitting trade between the loyal and insurrectionary districts. Their character and purpose were manifest beyond dispute, and calling them conditions of trade could not, any more than calling them "fees," change either their character or purpose. They were, we repeat, taxes, levied for purposes of revenue, and their imposition was a high legislative act which could not be delegated to an executive officer.

But as we have already intimated, this whole inquiry as to the power of Congress, and as to that of the President, independent of legislation, is quite unnecessary to the determination of this case. We think it will not be disputed that after Congress had legislated on the subject, the powers of the

President and of the Secretary of the Treasury were just what the Act conferred, and no others. This was substantially declared by this Court, in the case of Coppell *v.* Hall, 7 Wallace, 542. The question is, therefore, not what powers Congress *might* have conferred, but what power *did* it confer? And we think it clear that whatever powers were conferred by the Act which can by any possibility be supposed to have warranted these exactions, were conferred upon the Secretary of the Treasury, and not on the President; and the fact that they were conferred on the former officer, and not on the President, or the Secretary of War, is, to our minds, an additional and satisfactory proof that Congress did not intend to confer any such power as that which was actually exercised.

We dismiss this branch of the case, then, with a re-statement of the question involved. It is this: Did Congress intend to confer upon the Secretary of the Treasury power to tax, at his discretion, all cotton which should come from the insurrectionary to the loyal States during the war; and can that intention be inferred from an Act containing not one word expressive of such a purpose? And that question we leave to the decision of this Court.

I now proceed, therefore, to consider the question presented by the second charge of the Circuit Court, viz.: Whether the action of the Secretary of the Treasury, in imposing these exactions, and that of the defendant in enforcing them, was ratified and made valid by the Act of July 2, 1864, and we think that a few words will dispose of this question.

The only portion of the Act referred to which can be supposed to have had the effect attributed to it by the Circuit Court is the third section, the eleventh section being, by its very terms, entirely prospective, and applying only to expenses arising under that Act itself, which *repealed*, except as to a very limited part of its operation, the portion of that of 1861 under which the regulations with which we are concerned were promulgated.

The 3d section is as follows: "That all moneys "arising from the leasing of abandoned lands, houses "and tenements, or from sales of captured and "abandoned property, collected and sold in pursu- "ance of said Act" [that of March 13, 1863,] "or "of this Act, or from fees collected under the rules "and regulations made by the Secretary of the "Treasury, and approved by the President, dated "respectively the 20th day of August, 1862, the 31st "day of March, and the 11th day of September, "1863, or under any amendments or modifications "thereof, which have been, or shall be, made by the "Secretary of the Treasury and approved by the "President, for conducting the commercial inter- "course which has been, or shall be, licensed and "permitted by the President, with and in States de- "clared in insurrection, shall, after satisfying there- "from, all proper and necessary expenses, to be "approved by the Secretary of the Treasury, be "paid into the Treasury of the United States."

Now, were we supposed to be technical we might insist that this provision had no reference to the moneys we are seeking to recover. The Act speaks of "fees," and, as we have shown, the exactions we complain of were not fees in any sense of the term.

But we waive this consideration. We have no doubt that Congress intended the provision to apply to the general fund derived from the various sources mentioned in the Act, including the so-called fees in question.

Nevertheless, we think it clear that there is nothing in the provision which can be held to have legalized the exactions. We think it has been very clearly shown that they were not legal when they were imposed; they are not declared legal by the enactment we are now considering, and we insist that it is not to be supposed that Congress would have attempted to impart legality to them by any such doubtful and indirect means as the adoption of this provision.

Indeed we deny the efficacy of any such means,

had it been clear that they were adopted with the view supposed The case would then be simply that of an attempt by the Legislature to give, by construction, to a prior law, an effect, as to past time and events, different from that which its own terms imported. This the Legislature could not do. The legislative power may change the *law* as to the *future*, but it cannot change the *construction* of the law as to the *past*.

But Congress made no such attempt. It became aware that large sums of money, amounting in the aggregate to several millions, had accumulated in the hands of an Executive officer. Some of those moneys had been derived from leases of abandoned lands and houses and from sales of captured and abandoned property, and some of them from exactions made under the regulations of the Secretary of the Treasury ; and it provided, in reference to the whole of them, that, after payments therefrom of all proper and necessary expenses, they should be paid into the Treasury.

Now, as to the provision that certain expenses should be paid out of these moneys—which might be thought to be such an exercise of the power of disposal of the funds as would imply an assumption of absolute ownership in them, and, therefore, to amount to an indirect assertion of the legality of the means by which they had been accumulated—it is to be observed that the moneys had been derived from various sources, among which—and the most important of all—were sales of captured and abandoned property, and that necessary expenses had been incurred in the management of that property for the payment of which, out of the proceeds, it was very proper to provide. On the other hand, there is no ground for supposing that this provision related to any expenses attending the enforcement of the regulations in controversy, since there is none for supposing that any such remained unpaid. And even if this were otherwise, the funds in question embraced sums derived from the fees prescribed,

as we have seen, by the Secretary's regulations *for services actually rendered*, as well as from the tax of which we complain; and there is, so far as we are advised, no reason to suppose that those sums were inadequate to meet all expenses which might by any possibility remain unsatisfied. So that there is nothing in this provision which shows any intention to appropriate any portion of the proceeds of the tax.

And as to the requirement that the money should be paid into the Treasury, there was nothing in that involving any such assertion of ownership of the moneys, as would imply a legalization of the means by which they had been obtained. As well might it be claimed that when Congress passed the Act of March 3d, 1839, requiring collectors of customs to pay immediately into the Treasury duties collected by them, it intended thereby to legalize all the exactions of duties made, or to be made, by those officers; or that, by the very enactment under consideration, it intended to legalize all seizures which had been, or should be made, of property as captured or abandoned; either of which suppositions would be manifestly absurd.

We submit that all that can be properly inferred from this legislation is, that Congress thought it unwise to have so large sums of money in the keeping of an executive officer; and considered that, whoever might be ultimately entitled to them, the public treasury was the proper place for their custody.

And, indeed, it is well known that the provision was adopted at the special request of the Secretary of the Treasury, who felt embarrassed by the custody of moneys, respecting the disposition of which no law existed for his guidance. And it would seem as if this single circumstance ought to afford sufficient evidence of the irregular, if not illegal, character of the means by which they had been accumulated.

I proceed, then, to consider the remaining question presented by the record, viz.: Whether the plaintiffs are debarred from maintaining this action, by their failure to make formal protest against the exactions at the time they were paid.

And we insist that they are not, for the reason that no protest was necessary, the considerations which are sometimes held to require a protest having here no application or existence.

Certainly the case is not within the provisions of any statute requiring a protest; and we maintain that it is as far from being within the reason or policy of any; and equally as far from being within any decision, or sound legal principle, applicable to the subject.

If there be any Act, or Acts, of Congress, which can be supposed, by analogy or otherwise, to require a protest in a case like the present, it must be some one or more of those requiring a protest in order to the maintenance of an action against a collector of customs, for duties illegally exacted; but a little consideration will, we think, very clearly show that the case is no more within the reason or policy than it is within the letter of those acts.

The main purpose of the first of them—that of Feb'y 26th, 1845—was, as is well known, and, indeed, as is shown alike by its title and its provisions, to restore to importers the right of action against collectors; which, according to the decision of this Court in the case of Cary *vs.* Curtis, had been taken away by the Act of March 3, 1839. And it is evident that it is not in that portion of the Act which gives expression to this purpose, that we are to look for anything which can be considered as establishing the necessity of a protest in such a case as the present.

But the right of action thus restored, as well as the power of the Secretary of the Treasury to refund the duties, was qualified by the provision that nothing contained in the second section of the Act of March 3, 1869, should be construed to authorize

the Secretary to refund any duties paid under protest; nor should any action be maintained against any collector to recover duties paid under protest, unless such protest was made in writing, and signed by the claimant at or before the payment of the duties, setting forth distinctly and specifically the grounds of objection to the payment thereof.

Here, then, is the portion of the Act, the reason and policy of which we are to examine; and as this was the inception of the legislation of Congress on the subject of protests, and as all subsequent legislation has conformed closely to the policy thus inaugurated, it is here that we are to seek for the reasons upon which the entire legislation upon the subject is and has been founded.

And we conceive that the reasons which induced Congress to require a protest in such cases were, first, consideration for the doctrines established or adopted by this Court in the case of Elliott *vs.* Swartwout, wherein it was decided that no action could be maintained against a collector to recover duties which he had, in good faith and in the regular course of his duty, paid into the Treasury of the United States, without a protest having been made at the time of the payment, or any notice not to pay over the moneys, or of an intention to recover it back, having been given him; second, that it was thought that, in such cases, where the rightfulness of the rate and amount of duty legally demandable generally depended upon the name, quantity, quality or value of the merchandise—matters about which the merchant might be presumed to be at least as well informed as the officers of the customs—it was but reasonable and proper to require him, if he objected to the demand made of him, to state his objections clearly and in writing; and, finally, that the laws had provided another remedy than that by suit, for any alleged over-exactions by the collector, viz., an appeal to the Secretary of the Treasury, which remedy, by its very nature, rendered a protest expedient, if not indispensable.

And if we look to the grounds of the decision in Elliott *vs.* Swartwout, that a protest or notice not to pay over was necessary, we find that they were, first, that the collector was to be regarded as the mere agent of the Government, and therefore, of course, in duty bound to account for and pay over to it moneys received by him in that capacity, unless notified of the paramount claims thereto of other parties; and, second, that duties paid to a collector of customs must be regarded as having been voluntarily paid. Similar views were also adopted in the case of Cary *vs.* Curtis.

Such, then, were the reasons, as we conceive, which induced Congress to adopt the clause in the Act of February 26, 1845, requiring protests, and which dictated all subsequent legislation making a like requirement; such, also, were the reasons which influenced this Court in its decisions on the subject; and such, or similar, must, we think, be those which will actuate all legislatures and all Courts in legislating or adjudicating thereupon.

There is, however, one other ground upon which a protest has, under certain circumstances, been sometimes held to be important, viz., as an evidence that the act to which the protest relates was, in fact, involuntary, though it has been expressly, and very properly, held that, if the other circumstances show clearly that the act was really voluntary, a protest cannot avail to give it a different character.

Beyond the reasons thus set forth, we know of none requiring a protest in order to entitle a party to an action for the recovery of what has been illegally exacted from him, and we shall endeavor to show that not one of them exists in the present case.

In the first place, then, we maintain that the payments were involuntary; and we insist, further, that this involuntary character was so manifest, from the circumstances under which they were made, as not to require the additional evidence of a protest. The record shows that they were made by the plaintiffs solely in order to obtain permits and be allowed to

ship their cotton. This was alleged in their declaration and admitted in the statement given in evidence on the trial, and that in terms which can admit of no dispute.

Indeed, we do not see how a clearer case of involuntary payment could well be made than is shown in that statement. It is therein admitted that the plaintiffs applied, as alleged in the declaration, to the defendant for permits to ship their cotton to a loyal State; that defendant refused such permits, or o allow the cotton to be shipped without the payment of the exactions; that it was at the time well known, by the public and the plaintiffs, that no such shipment would be permitted by the defendant, except on compliance with such requirement; that defendant would seize and detain for confiscation all cotton shipped, or attempted to be shipped, without such compliance; and that the plaintiffs, in order to obtain such permits, and to be allowed to ship their cotton, paid the exactions.

Now let these circumstances be compared with those in which payments have been held by the Courts to have been involuntary, and what is the result?

In Astley *v.* Reynolds, 2 Strange, 915, the plaintiff paid usurious interest in order to get possession of his goods, which were withheld by the defendant; in —— *v.* Pigott, mentioned by Lord Raymond, in Cartwright *v.* Rowley, 2 Esp. N. P. C., 732, the action was for money paid to the steward of a manor for producing certain deeds and Court-rolls; in Shaw *v.* Woodcock, 7 Barn. & Cress., 73, it was for sums paid to get possession of policies of insurance, and the Court said that the action would lie *whether there was a pressing necessity or not;* in Boston & Sandw. Glass Co. *v.* Boston, 4 Mete., 181, it was for taxes paid to a collector who had a tax bill and warrant, and so also in Amesbury Woolen and Cotton Manufacturing Co. *v.* Inhabitants of Amesbury, 17 Mass., 46, and Preston *v.* City of Boston, 12 Pick., 7; in Ripley *v.* Gelston, 9 Johns., 201, and in

Clinton *v.* Strong, 9 Johns., 370, it was for tonnage money and light money, paid to obtain clearances; in Steele *v.* Williams, 20 Eng. Com. Law & Eq., 319, it was for money charged by defendant for permission to examine register-book of baptisms and burials; in Parker *v.* Great Western Railway Co., 7 M. & Gr., 253, it was for exorbitant charges paid to induce the defendant to carry plaintiff's goods; in Chase *v.* Phipps, 7 M. & Gr. 586, it was for an exorbitant demand made by the attorney of a mortgagee with power of sale, who refused to stop the sale or deliver the title deeds unless his demand should be complied with; in Morgan *v.* Palmer, 2 B. & C., 726, it was for an illegal fee for a license to a publican; in Lewis, *v.* Hammond, 2 B. and A., 206, and Waterhouse *v.* Keen, 4 B. and C., 200, it was for illegal toll exacted by toll-gate keepers; in Hill *v.* Steel, 5 Bing., 57, it was for illegal and excessive charges on a distress for rent; in Williams *v.* Higby, 8 East, 378, it was for a sum of money paid to effect a compromise of a *qui tam* action for usury; in Cobb *v.* Chester, 32 Conn., 308, it was for board bill of plaintiff's son, demanded by defendant as a condition of delivering up a chest of tools belonging to plaintiff; in Tatt *v.* Id, 3 Blatch., 249, and Beckwith *v.* Frisbie, 32 Vt., 559, it was for excessive freight demanded by common carriers for delivery of goods; in Ogden *v.* Maxwell, 3 Blatch., 319, it was for fees illegally exacted for permits to land passengers; in American Ins. Co. *v.* Britton, 8 Bosw., it was for fees exacted by a public officer; in Bradford *v.* Chicago, 25 Ill., 411, it was for an illegal assessment paid on presentation of a collector's warrant; in Townsend *v.* Dyckman, 2 E. D. Smith, 262, it was for illegal fees demanded for permission to inspect records; in Harmony *v.* Bingham, 2 Kernan, 99, it was for excessive charges demanded by a carrier for the delivery of goods; in Cazenove *v.* Cutler, 4 Mete, 246, it was for money illegally demanded by a mortgagee in possession, after condition broken, for refraining from foreclosure; in Chase *v.* Dwinal, 7 Greenl., 134, it

was for illegal tolls paid to secure release of raft; in Bates *v.* N. Y. Ins. Co., 3 Johns. Cas., 238, it was for money paid to procure an assignment of stock; in Mercer *v.* Bulkley, 15 Wend., 321, it was for money paid on execution already satisfied in order to prevent goods from being sold; in Britton *v.* Frink, 3 How. Pr., 102, (Ct. of Appeals), and Moulton *v.* Bennett, 18 Wend., 586, it was for an excess of costs paid to attorneys on settlement of suits, the payments being necessary to prevent the prosecution of the suits, and the accumulation of further costs; and the ground upon which the action at common law for the recovery of usurious interest is maintained, is that the lender has taken advantage of the necessities of the borrower. (Schoeppel *v.* Corning, 2 Seld., 115.)

Now, we think that we risk nothing in saying that there is no comparison between the most of these cases and our own, in respect to the degree of compulsion under which the payments were respectively made, and that we are, therefore, fully justified in saying that in the case under consideration the payment was clearly involuntary. But this is equally shown by a more particular view.

It is well settled law that where money has been paid to secure a right which the party paying was entitled to without such payment, and such right was withheld by the party receiving payment, until the payment was made, such payment was involuntary. The cases of Corkle *v.* Maxwell, 3 Blatch., 413, and Baker *v.* Cincinnati, 11 Ohio (N. S.), 534, may be referred to upon this point. If, then, the plaintiffs had a right to the permits, or to ship their cotton, without the payments exacted of them, the latter were involuntary.

Had the plaintiffs, then, a right to ship their cotton without compliance with these exactions? We insist that their right to do so was clear and indisputable. If the position we have assumed in respect to the application of the Act of 1861 be correct, then, of course, that which we now take cannot be denied.

But beyond this, the trade of which such shipments formed a part, had been licensed by the President. It is true that he had incorporated into his license the requirement, in substance, that the licensed trade should be carried on in pursuance of the regulations of the Secretary of the Treasury. This was, however, no more than had been required by the law itself; and there can be no reason to suppose that the President intended his own requirement to have any other or different effect from that of the statutory provision. At all events, it is certain that he could not have intended to make the taking effect of his license depend upon the compliance, therein enjoined, with the regulations of the Secretary of the Treasury; since that injunction embraced, in express terms, future and present regulations alike, and, indeed, *at the time when his first license appeared, on the 28th February*, 1862, *no regulations whatever were in existence.* And it is to be observed that the first license was never *revoked;* nor was it ever *modified*, unless the subsequent one of March 31st, or the approval of the regulations of September 11th, 1863, can be supposed to have had that effect. We insist that it was not affected by those acts of the President; and that from the time it was issued, there was, at all times, a valid subsisting license of the trade in question, subject only to the requirement that it should be carried on pursuant to the regulations of the Secretary. And we further maintain that the issuing of that license, in the terms, and under the circumstances mentioned, shows conclusively that the President intended no more than we have indicated by attaching to his licenses the requirement in question.

The only proper construction which can be placed upon the act of the President, therefore, is, that he intended to license, and did license, the trade; simply requiring, as the law required, that such trade should be carried on in pursuance of the regulations of the Secretary. Indeed, to suppose otherwise would be to attribute to the President an

attempt to delegate to the Secretary of the Treasury that power to *license* which the law had entrusted to himself alone.

But if it were otherwise, there would be no ground for supposing that the President intended to require compliance with any regulations of the Secretary which might be illegal. To entertain such a supposition would be grossly indecorous and unwarrantable; and it would be no less gratuitous than unwarrantable. The reference to the regulations in the license is general; and there is, therefore, no sort of warrant for holding that the President intended to require, as a condition of the efficacy of his license, compliance with each separate regulation, regardless of whether the same might be legal or illegal. He can only be supposed to have referred to legal regulations—that is, actual regulations; illegal regulations, or, rather, requirements, could not be regulations at all. In the case of Wynehamer *v.* The People, 3 Kernan's Rep., 378, it was said, "Laws in relation to civil rights are sometimes held to be unconstitutional, in so far as they affect the rights of certain parties, and valid in respect to others. This is done mainly upon the ground that the Courts will not construe them to relate to such cases as the Legislature had not power to act upon." A similar principle should be applied here. Not to apply it would be to do wrong alike to the President and to those affected by his acts.

But even supposing that we were in error in these views, and that the acts and intentions of the President were to be construed as tantamount to a declaration that he licensed the trade, *provided those who engaged in it should pay the particular exactions of which we complain;*—how would the case stand? We have shown that those exactions were illegal; but they were complied with. Could the Government be heard to say, in such a case: "You had no right to engage in this trade except on compliance with the exactions—illegal though they were—which were made of you, and having engaged in it, and com-

plied with the exactions, you must be held to have done so voluntarily, and you are, therefore, remediless?" We deny that it could do so, and we say that, if it could, the face of every honest man, in every land, would crimson with shame for the laws that could tolerate, and for the government that could practice, a wrong so foul.

We insist that the Government is estopped to deny the existence of a valid license. The money taken from the plaintiffs was demanded and taken in pursuance of regulations of the Secretary of the Treasury which pre-supposed a license. The law only authorized the Secretary to regulate such trade as should be licensed by the President. The license must, therefore, of necessity, have preceded the regulations; consequently, the demand and receipt of the money necessarily assumed the existence of the license, and the Government is, as we have said, estopped to deny it.

In The Mayor *v.* Second Avenue Railroad Co., it was contended that the grant of the franchise to the Company was void, and was, therefore, no protection to the latter against the exactions of the city; but the Court held the plaintiff estopped from setting up such a claim.

And let the case we have supposed be tested by a parallel one. The President holds the pardoning power. Suppose he were to grant a pardon to an offender, but were to incorporate into the instrument of pardon, a proviso, or condition, that the recipient should pay to him, or to some subordinate of his, a large sum of money, not required by any law to be paid, and not conducive to any end for which the pardoning power may be legitimately exercised, and the recipient of the pardon should pay the sum, would it be contended for a moment, either that he had no right to the pardon without compliance with the illegal condition, or, that, having complied, he could not recover back what he had thus paid? We think not.

But it is unnecessary to consider what might be

the rights of the plaintiffs under such circumstances. The considerations already alluded to show conclusively, as we think, that the President could have had no such intention as that supposed.

The President, then, issued his license authorizing trade with the insurrectionary districts, subject only to the legal regulations of the Secretary of the Treasury; and the exactions made of the plaintiffs, being illegal, they had a right to transport their cotton without payment of them.

That the plaintiffs could not, in fact, have shipped their cotton without compliance with the exactions, is not only clear from the circumstances, but is, as we have seen, distinctly admitted in the stipulation PROVED upon the trial. It is also admitted that the plaintiffs paid the money demanded of them for the sole purpose of being permitted to ship their cotton.

Under these circumstances, it is submitted that such payment was involuntary upon every principle of reason as well as of law.

We are not unmindful that this Court held, as has been already noticed, in the case of Ellott *vs.* Swartwout, that a payment of duties to a collector of customs, who, acting in good faith, has, in the regular course of his duty, paid the same into the treasury, without any protest at the time of payment, or notice not to pay over to the treasury, is to be regarded as a voluntary payment, and that, in such a case, no action will lie against the collector to recover the duties.

But there is no parallel between such a case and the present. Payments of duties are usually made in time of peace, when the Courts are open to all, and the administration of the Government proceeds in its ordinary way. At such a time, whether the party pays, or refuses to pay, the consequence can be nothing more than some temporary inconvenience, for which redress may always be obtained without much delay; and, as we have before stated, the law has provided a special mode of redress in such

cases, by appeal to the Secretary of the Treasury. As has also been before mentioned, the amount of duty chargeable upon imported merchandise is a matter depending upon considerations which may reasonably be presumed to be within the peculiar knowledge of the merchant. Finally, one of the main grounds of decision in the case of ~~Curtis~~ Elliott v. Swartwout Curtis was that there existed a recognized right in the collector to retain duties which had been paid under protest, or in regard to which notice had been given to him not to pay them over to the Treasury. If, under such circumstances, a merchant should see fit to pay duties demanded of him, without protest, and without notice to the collector of any objection, until the latter should have paid over the same to the Treasury, it might well be held that he thereby waived any objections he might have to their legality.

But in the present case all these circumstances are different. The exactions were made in time of war, and in a region where military force prevailed. The plaintiffs had no option between foregoing indefinitely the exercise of their right to ship their cotton and compliance with the demands made upon them; and for the injury which would have resulted to them from the former course they were absolutely without redress. It is manifest that no protest would have deterred the defendant from enforcing the exactions; and it is equally clear that none would have caused him to retain the money in his own hands. Both as to the imposition of the exactions and as to the paying them over, defendant was under express instructions; and it is idle to suppose that he would, at such a time, have disobeyed them. And there was nothing connected with the grounds of their imposition within the peculiar knowledge of the plaintiffs, and nothing to be urged by way of objection to them, which was not completely within that of the defendant and of the Secretary of the Treasury. What folly would it have been, under such circumstances, to have

protested! A protest would, indeed, have been, in such a case, to use the language of the Court in Cary *vs.* Curtis, "nugatory—a vain act, which the law never requires."

We repeat, then, that the payment of these exactions was involuntary, and that its involuntary character was so manifest that no protest was required to make it apparent.

And none was required on account of the character or capacity in which the defendant acted. In the case of Elliott *vs.* Swartwout it was, indeed, decided by this Court, as has been already noticed, that where money had been voluntarily paid to an agent, and by him paid over to his principal, without notice that it was deemed an illegal exaction, or that he should not pay it over to his principal, the money could not be recovered back. And, in the case of Cary *v.* Curtis, where it was held that the Act of March 3, 1839, by requiring the collectors to pay over to the treasury moneys paid for unascertained duties, or duties paid under protest, had taken away the right of action against the collector for such moneys, the Court state the following, among others, as the grounds of their decision, viz: that the payment must be understood as having been made with knowledge of the parties that the right of retaining or refunding the money did not exist; that it must, by law, pass from the collector immediately on its receipt; that payment to him was, in effect, payment into the treasury; that notice to him was, under such circumstances, of no effect to bind him to refund; and that, as the collector, since the statute, had power neither to retain nor refund, there could, as between him and the plaintiff, be no privity nor implication on which to found the promise raised by law only when an obligation to undertake or promise exists.

But none of the doctrines or considerations, upon which the Court proceeded in these cases, have any application to the present one, and for the conclusive reason that they only apply, and were, in the cases

cited, only applied, as is expressly declared, to cases of voluntary payment; whereas, as we have shown, in the case now before the Court, the payment was involuntary. And the reason of this distinction between cases of voluntary and of involuntary payment is obvious. Where money, not legally due, is paid involuntarily, the party who compels its payment becomes a wrong doer, and he can invoke none of the doctrines of agency to shield himself from the consequences of his act. He cannot, by paying over the money to another, whether he call that other his principal or his confederate, or give him any other appellation, discharge himself from accountability for it to the party from whom it was extorted. It is only when a party has received money which he *ought* to pay over to another, that such payment can, under any circumstances, protect him from the claims of the party to whom it rightfully belongs; and there can be no obligation, upon the recipient of money involuntarily paid, upon an illegal demand, to pay it over to any third person. On the contrary, his plain duty is to return it to the one from whom it was taken. He is bound to take notice of the wrongful character of his own act and of the rights of the party wronged. If, in disregard of those rights, he parts with the money, he can plead no character of agent, and no want of protest or of notice to defeat the claims of the injured party. Upon this point we refer to the cases of Clinton *v.* Strong, 9 Johns., 370; Ripley *v.* Gelston, 9 Johns., 201; Frye *v.* Lockwood, 4 Cowen, 454; Snowdon *v.* Davis, 1 Taunt., 359; and Townsend *v.* Wilson, 1 Camp., 397.

Another consideration, growing out of the one just stated, shows conclusively that the views set forth in Cary *vs.* Curtis have no application to the present case. It is this: The ground on which that case was decided was, that the collector, being the mere agent of the Government to receive the duties and pay them over to the Treasury, his liability to an action, before the Act of 3d March, 1839,

resulted from his right, in case of protest or notice not to pay over, to retain the moneys in his own hands; and that, the statute having peremptorily taken away this right, his liability to the action of the importer was, also, necessarily taken way.

It will, therefore, be seen that the agency of the collector, and the imperative necessity he was under to pay over the money, were the essential grounds on which his immunity was held to rest. Now neither of these elements exists in the present case.

It has, we think, been satisfactorily shown that the so-called regulation of the Secretary of the Treasury imposing these exactions was altogether without warrant of law, and, of course, if the one by which they were imposed was illegal, that which required them to be paid over to a United States depositary was also illegal. Neither the one nor the other, therefore, imposed any obligation upon the defendant or afforded him any protection. The Secretary of the Treasury and the defendant were, in contemplation of law, joint wrong-doers, between whom no relation of principal and agent can be held to have existed.

Now, it is clear that, had there been no direction to pay over, and had this action been brought before the defendant had, in fact, paid over the money, he could not have pleaded his *agency* in bar of a recovery; nor, had it been brought *after* payment over, would such *payment* have any more availed him. A wrong-doer cannot, by handing over the fruits of his wrong to another, whoever that other may be, relieve himself from accountability for his act. The defendant would, in such case, have been under no obligation—nay, he would have had no *right*—to pay over the money to any other person. And, as the direction of the Secretary to pay over was illegal and nugatory, the case is not changed by the existence of that direction. The cases which we have cited in our brief are express and clear upon these points, and establish, as we think, the principles we lay down beyond the reach of contra-

diction. See particularly Frye *v.* Lockwood, 4 Cowen, 454.

But there is still another reason why no protest was necessary in this case, and it is this: the action, though nominally against the defendant named in the record, is substantially against the Government.

The 12th Section of the Act of March 3, 1863, 12 Stat. at Large, p. 741, provides that where a recovery shall be had in any suit or proceeding against a Collector of the Customs, or other officer of the Revenue, for any act done by him, or for the recovery of any money exacted by or paid to such officer, and by him paid into the Treasury of the United States, and the Court shall certify that there was probable cause for the act done by the Collector or other officer, or that he acted under the directions of the Secretary of the Treasury or other proper officer of the Government, no execution shall issue against such Collector or other officer, but the amount so recovered shall, upon final judgment, be provided for and paid out of the proper appropriation from the Treasury.

Now, had this money not been paid into the Treasury, it might well be questioned whether the Government would have been in any way accountable for it; since, in that case, it might be urged that the enforcement of the exactions was the unauthorized act of the defendant and the Secretary of the Treasury, for which those officers would alone be responsible; but the Government, by receiving the money into the Treasury, has undoubtedly become accountable for it; and the case has, by such payment into the Treasury, been brought directly within the provisions of the Act just cited.

Inasmuch, therefore, as the real and ultimate responsibility for the exactions rests upon the Government, and not upon the defendant, no protest could have been necessary for any purpose of protection to the latter, even had he been acting in the capacity of agent; and, of course, none could have been required for the protection of any interest of the Government, since, as has been already shown, no pro-

test could possibly have been of any avail; and, besides, the Government is still in possession of the moneys, and, of course, can have suffered no prejudice by the failure to protest.

We maintain, then, that the Circuit Court erred in each of the three charges set out in the record, and that the right of the plaintiffs to maintain this action is clear; and perhaps what has been already said in this argument is as much as I have any right now to offer to the consideration of the Court, if not all that a satisfactory presentation of the case requires. There are, nevertheless, one or two points upon which it may be proper to submit a few additional remarks.

And first. It may possibly appear, at first sight, not to be altogether equitable, that the plaintiffs should recover these exactions after having enjoyed what may be regarded as, in some sort, the consideration for which they were paid. But in such a view there lies a fallacy highly injurious to the plaintiffs. They received *no* consideration for the moneys they paid. The apparent consideration was not only something to which they were entitled, without any payment, but which was, in no way, exclusive or personal to them. Every other loyal citizen had the same right to engage in the trade which they had. There was nothing, therefore, in what was granted to them which could be a legitimate consideration for demands of money. As well might money be asked for permission to breathe the air, which is common to all.

Again, it is intimated in the brief for the Government, that the plaintiffs have been tardy in the assertion of their rights. This consideration might have had some weight had this action been substantially, as it is nominally, against the defendant named in the record, and had it appeared that he had acted as agent, merely; and that the payments to him were voluntary, but in the case, as it is, it can have none whatever. The defendant acted wrongfully, and it is not for him to complain that

reparation was not instantly demanded; delay, in that particular, can only be regarded as a favor to him. But, as we have seen, the action is practically against the Government, and as the Government can have suffered no prejudice by the delay, it can have no ground of complaint.

And this brings me to say, as I do, in conclusion, that, upon a review of this whole case, we think we cannot be mistaken in considering it perfectly clear that the Government has in its treasury this large sum of money to which it has no right, and which, in equity and good conscience, belongs to the plaintiffs; and we think, furthermore, that a strict sense of justice, and still more, a sense of what is due from the Government to the citizen—especially from a Government which avowedly exists but for the protection of the people's rights—would have prompted the return of this money—as we insist that it would prompt the return of all moneys obtained under like circumstances—without putting the plaintiffs to the necessity of prosecuting this action. This is but applying to Government the same rule of conduct which the common conscience of mankind applies to individuals; and surely we have a right to expect from it at least as scrupulous a regard for justice as we look for in private persons. But the action has been brought. The plaintiffs waited until peace had been restored, and until the excitements of the war had subsided, and they might hope to be heard without passion or prejudice. They waited, too, until the Government could restore, without inconvenience, what was taken without right; and they now come and ask for its return. We think they are fully entitled to what they demand, and that to deny it would be to practically sanction a great wrong.

EDWARD JORDAN,
Of Counsel for Plaintiffs.

Mason v Carr

Jan 1858